

Queensland



# JUVENILE JUSTICE ACT 1992

**Reprinted as in force on 26 August 1993  
(includes amendments up to Act No. 32 of 1993)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 26 August 1993. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use different spelling consistent with current legislative drafting practice, as permitted by section 26(2) of that Act;
- use punctuation consistent with current legislative drafting practice as permitted by sections 27 of that Act;
- reorder definitions as permitted by section 30 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 40 of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;
- correct minor errors as permitted by section 44 of that Act.

**Also see Endnotes for—**

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

# Queensland



## JUVENILE JUSTICE ACT 1992

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# **JUVENILE JUSTICE ACT 1992**

[as amended by all amendments that commenced on or before 26 August 1993<sup>2</sup>]

**An Act to provide comprehensively for the laws concerning children who commit, or who are alleged to have committed, offences and for related purposes**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Juvenile Justice Act 1992*<sup>3-6</sup>.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### **Objectives of Act**

3. The principal objectives of this Act are—
  - (a) to establish the basis for the administration of juvenile justice; and
  - (b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and
  - (c) to provide for the jurisdiction and proceedings of courts dealing with children; and
  - (d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
  - (e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander

communities, in the provision of services designed to—

- (i) rehabilitate children who commit offences; and
- (ii) reintegrate children who commit offences into the community.

### **Principles of juvenile justice**

**4.** The general principles underlying the operation of this Act (“**general principles of juvenile justice**”) are that—

- (a) because a child tends to be vulnerable in dealings with a person in authority a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child; and
- (b) a child—
  - (i) should be detained in custody for an offence (whether on arrest or sentence) only as a last resort; and
  - (ii) if detained in custody—should only be held in a facility suitable for children; and
- (c) if a child commits an offence, the child should be treated in a way that diverts the child from the courts’ criminal justice system, unless the nature of the offence and the child’s criminal history indicate that a proceeding for the offence should be started; and
- (d) if a proceeding is started against a child for an offence—
  - (i) the proceeding should be conducted in a fair and just way; and
  - (ii) the child should be given the opportunity to participate in and understand the proceeding; and
- (e) a child who commits an offence should be—
  - (i) held accountable and encouraged to accept responsibility for the offending behaviour; and
  - (ii) punished in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and
- (f) a decision affecting a child should, if practicable, be made and implemented within a time frame appropriate to the child’s sense

implemented within a time frame appropriate to the child's sense of time; and

- (g) the age, maturity and, where appropriate, cultural background of a child are relevant considerations in a decision made in relation to the child under this Act.

## **Definitions**

5. In this Act—

**“adult”** means a person who is not a child;

**“arrest”** includes apprehension and taking into custody;

**“arrest offence”** means—

- (a) an offence of a type for which the offender may be arrested without warrant; or
- (b) an offence committed in circumstances where the offender may be arrested without warrant;

**“attendance notice”** means an attendance notice under section 23 (Attendance notice may be issued for arrest offence);

**“bail”** means bail as prescribed by the *Bail Act 1980*;

**“breach of duty”** means a breach of duty as defined by section 4 of the *Justices Act 1886*;

**“caution”** means a caution administered under section 12 (Police officer may administer a caution);

**“chief executive”** means the chief executive of the department and a delegate of the chief executive;

**“child”** means—

- (a) a person who has not turned 17 years; or
- (b) after a day fixed under section 6 (Child's age regulation)—a person who has not turned 18 years;

**“Childrens Court Judge”** includes the Childrens Court when constituted by a Childrens Court Judge;

**“Childrens Court Magistrate”** includes the Childrens Court when

constituted by a Childrens Court Magistrate, Stipendiary Magistrate or justices;

**“Commissioner”** means the Commissioner of the Police Service;

**“committal proceeding”** means a proceeding before a justice taking an examination of witnesses in relation to a charge of an indictable offence;

**“community service”** means activities determined under section 202(2) (Chief executive to establish programs and services);

**“community service hours”** means the hours of community service that a child is required to perform under a community service order;

**“community service order”** means an order under section 120(1)(e) (Sentence orders—general);

**“concurrent jurisdiction”** means—

- (a) in relation to a Childrens Court Judge—the jurisdiction of the Judge when constituting a District Court for a proceeding in its criminal jurisdiction; or
- (b) in relation to a District Court—the jurisdiction of the Judge when constituting the Childrens Court; or
- (c) in relation to a Childrens Court Magistrate—the jurisdiction of the Magistrate or justices when constituting a Magistrates Court for a proceeding under the *Justices Act 1886* or the Criminal Code; or
- (d) in relation to a Magistrates Court—the jurisdiction of the Magistrate or justices when constituting the Childrens Court;

**“court”** includes a justice taking an examination of witnesses in relation to a charge of an indictable offence;

**“detention order”** means an order made under section 120(1)(f) (Sentence orders—general) or 121(1)(b) (Sentence orders—serious offences);

**“driver’s licence”** means a driver’s licence under the *Traffic Act 1949*;

**“finding of guilt”** includes—

- (a) a finding of guilt (whether or not a conviction is recorded); and
- (b) a finding of guilt on a plea of guilty;

**“general principles of juvenile justice”** means the general principles of



juvenile justice mentioned in section 4 (Principles of juvenile justice);

**“good behaviour order”** means an order made under section 120(1)(b) (Sentence orders—general);

**“immediate release order”** means an order made under section 176 (Immediate release order);

**“legal practitioner”** means—

- (a) a person admitted as a barrister of the Supreme Court whose name is currently enrolled on the Roll of Barristers of the Supreme Court; or
- (b) a person admitted as a solicitor of the Supreme Court whose name is currently enrolled on the Roll of Solicitors of the Supreme Court;

**“life offence”** means an offence for which a person sentenced as an adult would be liable to life imprisonment;

**“loss”** of property includes loss, damage or destruction;

**“medical treatment”** includes a physical, psychiatric, psychological or dental examination or treatment;

**“non-life offence”** means an offence other than a life offence;

**“parent”** means—

- (a) a parent or guardian of a child; or
- (b) a person who has lawful custody of a child other than because of the child’s detention for an offence or pending a proceeding for an offence; or
- (c) a person who has the day-to-day care and control of a child;

**“penalty unit”** has the meaning given under the *Penalties and Sentences Act 1992*;

**“police station”** means a police station within the meaning of the *Police Service Administration Act 1990*;

**“prison”** means a prison within the meaning of the *Corrective Services Act 1988*;

**“probation order”** means an order made under section 120(1)(d) (Sentence orders—general) or 121(1)(a) (Sentence orders—serious

offences);

**“procedural action or order”** means an action or order made for, or incidental to, a proceeding that does not constitute a hearing and determination on the merits of the matter to which the proceeding relates, for example—

- (a) the charging of a defendant; and
- (b) the issue of a warrant; and
- (c) the granting of bail or release without bail; and
- (d) the remand of a defendant; and
- (e) the adjournment of the proceeding;

**“proper officer”** means—

- (a) in relation to the Supreme Court or a District Court—the registrar or any sheriff, deputy sheriff or under sheriff; and
- (b) in relation to a Magistrates Court or a Childrens Court Magistrate—the clerk of the court of the Magistrates Court;

**“sentence order”** means an order made under section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences), including a reprimand;

**“serious offence”** means an offence mentioned in section 8 (Meaning of “serious offence”);

**“simple offence”** includes a regulatory offence and a breach of duty;

**“treatment”** includes therapeutic, palliative and preventative treatment.

### **Child’s age regulation**

**6.(1)** The Governor in Council may, by regulation, fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years.

**(2)** A person of 17 years who commits an offence before the commencement of the regulation will not be taken, after the commencement, to have committed the offence as a child in a subsequent proceeding for the offence.

(3) A court that sentences a person to whom subsection (2) applies for the offence mentioned in the subsection must have regard to the sentence that might have been imposed if the person were sentenced as a child.

(4) The court cannot order the person—

- (a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the person if sentenced as a child; or
- (b) to pay any amount by way of fine, restitution or compensation greater than that which the court could have ordered the person to pay if sentenced as a child.

(5) Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

### **Meaning of police officer “starting a proceeding”**

7. In this Act, mention of a police officer “starting a proceeding” against a child for an offence includes—

- (a) obtaining a warrant for the arrest of a child on a charge for an offence; and
- (b) arresting a child for an offence without a warrant.

### **Meaning of “serious offence”**

8.(1) Subject to subsection (2), in this Act “serious offence” means—

- (a) a life offence; or
- (b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.

(2) An offence is not a serious offence if it is of a type that, if committed by an adult, may be dealt with summarily under—

- (a) section 443(eb) of the Criminal Code; or
- (b) section 13 of the *Drugs Misuse Act 1986*.

(3) For the purpose of this section, the type of an offence includes the circumstances in which it is committed.

**Meaning of court that made order**

**9.(1)** In this Act, mention of the court that made a probation order, community service order, or immediate release order includes, if the order was made by—

- (a) the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or
- (b) a District Court—any sittings of a District Court in its criminal jurisdiction at any place in Queensland; or
- (c) a Childrens Court Judge—any sittings of a Childrens Court Judge at any place in Queensland; or
- (d) a Magistrates Court—any Magistrates Court sitting at any place in Queensland; or
- (e) a Childrens Court Magistrate—any Childrens Court Magistrate sitting at any place in Queensland.

**(2)** Subsection (1) applies even though the court is not constituted by the same judicial officer who made the order originally.

## **PART 2—CAUTIONS AND START OF PROCEEDINGS**

### *Division 1—Preliminary considerations*

**Police officer to consider alternatives to proceeding against child**

**10.(1)** Subject to section 20 (Arrest and ex officio indictment power preserved), a police officer, before starting a proceeding against a child for an offence, must first consider whether in all the circumstances it would be more appropriate—

- (a) to take no action; or
- (b) to administer a caution to the child.

**(2)** The circumstances to which the police officer must have regard

include—

- (a) the circumstances of the alleged offence; and
- (b) the child's previous history known to the police officer.

(3) If necessary the police officer must delay starting a proceeding in order to consider the matters mentioned in subsection (2).

### ***Division 2—Cautioning***

#### **Purpose of caution**

11. The purpose of this Division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the child instead of starting a proceeding for the offence.

#### **Police officer may administer a caution**

12.(1) A police officer instead of starting a proceeding against a child for an offence may administer a caution to the child.

(2) The child is then not liable to be prosecuted for the offence.

#### **Conditions for administration of police caution**

13.(1) A police officer may administer a caution to a child for an offence only if the child—

- (a) admits committing the offence to the police officer; and
- (b) consents to being cautioned.

(2) A police officer who administers a caution, or who requests the administration of a caution under section 14 (Caution administered by elder of Aboriginal or Torres Strait Islander community), must, if practicable, arrange to be present at the administration of the caution—

- (a) a person chosen by the child; or
- (b) a parent of the child or a person chosen by a parent of the child.

(3) The Commissioner may authorise a police officer who the

Commissioner considers has sufficient training or experience (“**authorised officer**”) to administer cautions.

(4) If a police officer administering a caution is not an authorised officer, the caution must be administered in the presence of an authorised officer.

### **Caution administered by elder of Aboriginal or Torres Strait Islander Community**

**14.(1)** If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, the caution may be administered by a recognised elder of the community at the request of an authorised officer mentioned in section 13 (Conditions for administration of police caution).

(2) In a proceeding, evidence that a person purported to administer a caution under subsection (1) as a recognised elder mentioned in the subsection is evidence that the person was a recognised elder.

### **Caution procedure must involve explanation**

**15.(1)** A police officer who administers, or requests the administration of, a caution to a child must take steps to ensure that the child and the person present under section 13(2) (Conditions for administration of police caution) understand the purpose, nature and effect of the caution.

(2) The steps that can be taken include, for example—

- (a) personally explaining these matters to the child; and
- (b) having some person with training or experience in the cautioning of children give the explanation; and
- (c) having an interpreter or other person able to communicate effectively with the child give the explanation; and
- (d) supplying an explanatory note in English or another language.

### **Caution procedure may involve apology to victim**

**16.(1)** This section applies only after a police officer decides that a caution should be administered to a child for an offence.

(2) The procedure of administering a caution to a child for an offence may involve the child apologising to a victim of the offence if—

- (a) the police officer administering, or requesting the administration of, the caution considers that an apology is an appropriate course of action in the particular circumstances of the case; and
- (b) the child is willing to apologise; and
- (c) the victim is willing to participate in the procedure.

### **Child must be given a certificate of caution**

**17.(1)** If a caution is administered to a child for an offence, the police officer who—

- (a) administered the caution; or
- (b) under section 14 (Caution administered by elder of Aboriginal or Torres Strait Islander community), requested the administration of the caution;

must give the child a certificate in a form approved by the Commissioner.

(2) The certificate must state—

- (a) that a caution was administered to the child; and
- (b) the child's name; and
- (c) the substance of the offence; and
- (d) the police officer's name and rank; and
- (e) the place where the caution was issued; and
- (f) the names of all persons present when the caution was issued; and
- (g) the nature and effect of a caution.

(3) In a proceeding, a document purporting to be a certificate or copy of a certificate is evidence that the child was administered a caution for the offence in the circumstances stated in the certificate.

**Confidentiality of cautions—inadmissibility**

**18.(1)** If a caution is to be, or has been, administered to a child, then, subject to subsection (2), a member of the Queensland Police Service is not to give to a person who is not a member of the Queensland Police Service information in any form that is likely to identify the child as a person to whom a caution is to be, or has been, given.

Maximum penalty—100 penalty units

**(2)** Subsection (1) does not prevent the information being provided to—

- (a) a parent of the child; or
- (b) a person who will be involved in the administration of the caution; or
- (c) a person who is undertaking research approved by the Commissioner; or
- (d) the chief executive; or
- (e) a legal practitioner acting for the child; or
- (f) a court, or legal practitioner acting for a party, in a proceeding in which the giving of the caution is relevant to a fact in issue.

**(3)** Subject to section 19(2) (Childrens Court may dismiss charge if caution should have been administered), evidence that a person was administered a caution is not admissible against the person in a proceeding—

- (a) against the person for an offence; or
- (b) for an application under the *Bail Act 1980*.

**Childrens Court may dismiss charge if caution should have been administered**

**19.(1)** If a child pleads guilty before a Childrens Court to a charge made against the child by a police officer, the court may dismiss the charge instead of accepting the plea of guilty if—

- (a) application is made for the dismissal by or on behalf of the child; and
- (b) the court is satisfied that the child should have been cautioned



instead of being charged.

(2) In determining the application, the Childrens Court may have regard to any other cautions administered to the child for any offence.

### ***Division 3—Arrest***

#### **Arrest and ex officio indictment power preserved**

**20.(1)** Sections 10 (Police officer to consider alternatives to proceeding against child) and 21 (Restriction on arrest of child) do not affect—

- (a) the power to charge under the proviso to section 42(1) of the *Justices Act 1886*; or
- (b) a power to arrest a child for a life offence; or
- (c) a proceeding on an indictment.

(2) Despite sections 10 (Police officer to consider alternatives to proceeding against child) and 21 (Restriction on arrest of child), a police officer may arrest a child if the police officer believes on reasonable grounds that arrest is necessary—

- (a) to prevent a continuation or a repetition of the offence or the commission of another offence; or
- (b) to prevent concealment, loss or destruction of evidence relating to the offence.

(3) Despite section 21 (Restriction on arrest of child), a police officer may arrest a child if the arresting police officer believes on reasonable grounds that the child is unlikely to appear before the Childrens Court in response to a complaint and summons or an attendance notice.

#### **Restriction on arrest of child**

**21.** Subject to section 20 (Arrest and ex officio indictment power preserved), a proceeding against a child for an offence must be started by way of—

- (a) complaint and summons under the *Justices Act 1886*; or
- (b) attendance notice.

**Parent and chief executive must be advised of arrest of child**

**22.** A person who arrests a child must promptly advise of the arrest and whereabouts of the child—

- (a) a parent of the child, unless a parent cannot be found after reasonable inquiry; and
- (b) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

***Division 4—Attendance notice*****Attendance notice may be issued for arrest offence**

**23.(1)** The object of this section is to provide an alternative way for a police officer to start a proceeding against a child that does not involve the custody associated with arrest or the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

**(2)** A police officer who believes on reasonable grounds that a child has committed an arrest offence, if the police officer acts promptly, may serve an attendance notice on a child.<sup>1</sup>

**(3)** An attendance notice must be personally served on a child.

**Attendance notice form**

**24.(1)** An attendance notice must—

- (a) state the substance of the offence alleged to have been committed; and
- (b) state the name of the child alleged to have committed the offence; and
- (c) require the child to appear before a Childrens Court Magistrate (“**the court**”) in relation to the offence at a specified time and place; and

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<sup>1</sup> An attendance notice differs from a complaint and summons in requiring the police officer with the beliefs mentioned to also serve the attendance notice.

(d) be signed by the police officer serving the attendance notice.

(2) The place specified in an attendance notice for the child to appear before the court must be a place where the court will be sitting at the time specified.

(3) The time specified in an attendance notice for the child to appear before the court must be a time—

- (a) as soon as practicable after service of the attendance notice; and
- (b) fixed generally by the proper officer of the court for hearing matters under this Act.

### **Attendance notice must be lodged in court without cost to child**

**25.(1)** Before the time a child is required by an attendance notice to appear before a Childrens Court Magistrate, the attendance notice must be lodged with the clerk of the court at the place where the child is required by the attendance notice to appear.

(2) A child must not be ordered to pay lodgment costs in the proceeding for the offence.

### **General particulars only are required on an attendance notice**

**26.(1)** The statement mentioned in section 24(1)(a) (Attendance notice form) need only provide general particulars of the offence, for example—

- (a) the type of offence; and
- (b) time and place it is alleged to have been committed.

(2) If 2 or more matters are properly joined in 1 attendance notice under section 43(1) of the *Justices Act 1886*, then, despite section 43(2) and (3) of that Act—

- (a) each matter need not be set out in a separate paragraph; and
- (b) objection cannot be taken to the attendance notice because each matter is not set out in a separate paragraph.

**Particulars of attendance notice offence must be given in the proceeding**

**27.(1)** Section 26 (General particulars only are required on an attendance notice) does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

**(2)** When a child on whom an attendance notice has been served appears before the Childrens Court Magistrate in response to the notice, the Childrens Court Magistrate must ensure that the child is provided promptly with all necessary particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

**Parent and chief executive must be advised of service of attendance notice on child**

**28.** A person who has served an attendance notice on a child must promptly advise—

- (a) a parent of the child, unless a parent cannot be found after reasonable inquiry; and
- (b) the chief executive.

**Attendance notice equivalent to a complaint and summons**

**29.(1)** A statement under section 24(1)(a) (Attendance notice form) is taken to be a complaint under the *Justices Act 1886*.

**(2)** A requirement made by a police officer under section 24(1)(c) (Attendance notice form) is taken to be a summons issued by a justice under the *Justices Act 1886*.

**(3)** Subject to this Act, the *Justices Act 1886* and any other Act applies to an attendance notice in the same way as it applies to a complaint and summons.

**Court may order immediate arrest of child who fails to appear**

**30.(1)** Subject to subsection (2) and section 31 (Court must strike out attendance notice if service insufficient), if a child fails to appear before a Childrens Court Magistrate as required by an attendance notice served on

the child, the court may order that a warrant issue for the arrest of the child to be brought before the court to be dealt with according to law.

(2) A court may order that a warrant issue for the arrest of a child under subsection (1) only if it is satisfied—

- (a) on oath or by deposition under section 56(3) of the *Justices Act 1886* that the child was served in time for it to be practical for the child to appear before the court; and
- (b) on oath that there is evidence substantiating the offence for which the attendance notice was served.

(3) Any justice may issue the warrant.

(4) The bail and custody provisions of Part 3 apply to a child arrested on the warrant.

### **Court must strike out attendance notice if service insufficient**

**31.(1)** If—

- (a) a child fails to appear before a Childrens Court Magistrate as required by an attendance notice; and
- (b) the court is not satisfied that the child was served in time for it to be practical for the child to appear before the court;

the court must strike out the attendance notice.

(2) The striking out of an attendance notice under subsection (1) does not prevent another proceeding being started for the offence for which the attendance notice was served.

### ***Division 5—Complaint and summons***

#### **Service of complaint and summons if offender a child**

**32.(1)** A complaint and summons requiring a child to appear before a court to answer a complaint of an offence must be served on the child a reasonable time before the child is required to appear before the court.

(2) The complaint is also to be served on—

(a) a parent of the child; and

(b) the chief executive.

(3) A person serving a complaint and summons on a child must do so—

(a) as discreetly as practicable; and

(b) not at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably effected.

(4) Subject to section 28 (Parent and chief executive must be advised of service of attendance notice on child), this section does not apply to an attendance notice.

### **Proof of service of complaint and summons in compliance with this Act**

33.(1) A statement in a deposition made for the purposes of section 56(3)(b) of the *Justices Act 1886* that the complaint and summons was served as required by this Act is evidence of that fact.

(2) Section 56(5) of the *Justices Act 1886* applies to the deposition.

### **No costs against child for lodgment of complaint and summons**

34. In a proceeding started against a child by complaint and summons, a court must not order the child to pay the cost of lodging the complaint and summons with the clerk of the court.

### **Proceeding in relation to simple offence in absence of child**

35.(1) Subject to subsection (2), a Childrens Court Magistrate may hear and determine a proceeding against a child in relation to a complaint and summons for a simple offence in the absence of the child in the way set out in Part 6 of the *Justices Act 1886*.

(2) Under subsection (1), the only sentence order a Childrens Court Magistrate may make against a child in the child's absence is an order imposing a fine, and then only if the child has indicated in writing to the court that the child has a capacity to pay a fine of a specified amount that is equal to or greater than the fine ordered to be paid.

***Division 6—Conditions on admissibility of child's statement*****Another person must be present**

**36.(1)** In a proceeding for an indictable offence, a court must not admit into evidence against the defendant a statement made or given to a police officer by the defendant when a child, unless the court is satisfied that there was present at the time and place the statement was made or given, a person mentioned in subsection (2).

**(2)** The person required to be present is—

- (a) a parent of the child; or
- (b) a legal practitioner acting for the child; or
- (c) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
- (d) a justice of the peace other than—
  - (i) a justice of the peace who is a member of the Queensland Police Service; or
  - (ii) a justice of the peace (commissioner for declarations); or
- (e) an adult nominated by the child.

**(3)** Subsection (1) does not apply if—

- (a) the prosecution satisfies the court that there was proper and sufficient reason for the absence of a person mentioned in subsection (2) at the time the statement was made or given; and
- (b) the court considers that, in the particular circumstances, the statement should be admitted into evidence.

**(4)** This section does not require that a police officer permit or cause to be present when a child makes or gives the statement a person whom the police officer suspects on reasonable grounds—

- (a) is an accomplice of the child; or
- (b) is, or is likely to become, an accessory after the fact;

in relation to the offence or another offence under investigation.

**(5)** This section does not limit the power of a court to exclude evidence

from admission in a proceeding.

## **PART 3—BAIL AND CUSTODY OF CHILDREN**

### **Bail Act 1980 applies**

**37.(1)** Subject to this Act, the *Bail Act 1980* applies in relation to a child charged with an offence.

**(2)** A review of a sentence order under Division 6 of Part 4 is an appeal for the purposes of the *Bail Act 1980*.

### **Arrested child must be brought promptly before the Childrens Court**

**38.** A child who is arrested on a charge of an offence must be brought promptly before the Childrens Court to be dealt with according to law.

### **Child must ordinarily be released from custody on charge**

**39.(1)** Subject to subsection (2), if—

- (a) a child who has been arrested on a charge of an offence is delivered into the custody of a police officer at a place that is a police station, watch-house or lockup; and
- (b) it is not practicable to promptly constitute the Childrens Court to deal with the child;

the police officer who is in charge of, or the watch-house keeper of the place, must, unless the *Bail Act 1980* otherwise provides, grant bail to the child and release the child from custody in accordance with section 7 of that Act.

**(2)** A police officer authorised to grant bail to a child in accordance with section 7 of the *Bail Act 1980* may instead—

- (a) release the child into the custody of a parent; or
- (b) permit the child to go at large;



without bail.

(3) The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the charge on which the child was arrested is to be brought at the time and place for the time being appointed for the child to do so.

(4) Subsection (2) does not limit the power of a police officer to grant bail.

### **Child must be given release notice**

**40.(1)** A police officer who releases a child from custody under section 39(2)(a) or (b) (Child must ordinarily be released from custody on charge) must give to the child a notice (“**release notice**”) in a form approved by the Commissioner.

(2) The release notice must set out—

- (a) the child’s name; and
- (b) the offence or the nature of the warrant on which the child was held in custody; and
- (c) the name of the police officer who started the proceeding, or justice who issued the warrant, on which the child was held in custody; and
- (d) the court into whose custody the child is required to surrender under the conditions of release; and
- (e) the time and place the child is required to surrender into the court’s custody; and
- (f) a warning that a warrant will be issued for the child’s arrest if the child fails to surrender into the court’s custody.

### **Custody of child pending court appearance**

**41.(1)** Until brought before a court, a child arrested on a charge of an offence or a warrant issued under this Act who is not released from custody must be held in the custody of—

- (a) the Commissioner; or

- (b) the chief executive in accordance with arrangements mentioned in subsection (2).

(2) The Commissioner must make arrangements with the chief executive for an arrested child wherever practicable to be placed in a detention centre until brought before a court.

(3) The chief executive must take the action necessary to hold the child in custody in accordance with the arrangements.

### **Court may in all cases release child without bail**

42.(1) If, in a particular case, a court may grant bail to and release a child from custody under the *Bail Act 1980*, the court may instead—

- (a) release the child into the custody of a parent; or
- (b) permit the child to go at large;

without bail.

(2) The release of a child without bail must be subject to a condition that the child surrenders into the custody of the court before which the child is required to appear at the time and place for the time being appointed for the child to do so.

(3) Subsection (1) does not limit the power of a court to grant bail.

### **Custody of child if not released by court**

43.(1) Except where the child remains the prisoner of the court, a court that remands a child in custody must remand the child into the custody of the chief executive despite the provisions of any other Act to the contrary.

(2) Jurisdiction conferred by an Act on a court—

- (a) to commit a person to a place of detention (other than a detention centre) pending appearance before a court; and
- (b) to give directions to the person in charge of the place;

is taken, if the person is a child, instead to confer jurisdiction on the court to remand the child into the custody of the chief executive and to give directions to the chief executive.

(3) A court that remands a child into the custody of the chief executive

must order the Commissioner to deliver the child as soon as practicable into the custody of the chief executive.

(4) A child held by the Commissioner under an order made under subsection (3) is—

- (a) before being delivered to the chief executive—in the custody of the Commissioner; and
- (b) after being delivered to the chief executive—in the custody of the chief executive.

(5) Subject to subsection (6), the chief executive may keep a child mentioned in subsection (3) who is in the chief executive's custody in places that the chief executive determines from time to time.

(6) The chief executive cannot determine under subsection (5) that a child is to be kept in a prison.

### **Warrant for arrest of child who fails to appear after release without bail**

44. Subject to this Act, the provisions of the *Bail Act 1980* relating to the issue of warrants for the arrest of defendants who fail to surrender into the custody of the court before which they were required to appear after being permitted to go at large without bail apply to a child who fails to appear after being released into the custody of a parent, or permitted to go at large, without bail.

### **Custody of child arrested on court warrant**

45. If, under an Act, a court issues or orders the issue of a warrant for the arrest of a child (other than a warrant for the commitment of a child to a detention centre) it must order the Commissioner to have the child promptly brought before a court to be dealt with according to law.

### **Childrens Court Judge may grant bail**

46.(1) Subject to this Part, a Childrens Court Judge may—

- (a) grant bail to a child held in custody on a charge of an offence; or
- (b) enlarge, vary or revoke bail granted to a child in, or in connection

with, a criminal proceeding within the meaning of the *Bail Act 1980*;

whether or not the child has appeared before the Childrens Court Judge in, or in connection with, the offence or criminal proceeding.

(2) Subsection (1)(a) applies even if the child has previously been refused bail by the Childrens Court.

(3) A child charged with an offence mentioned in section 13 of the *Bail Act 1980* may be granted bail by a Childrens Court Judge, despite the section.

(4) This section does not limit the power a court or person ordinarily has to grant, enlarge, vary or revoke bail.

## **PART 4—JURISDICTION AND PROCEEDINGS**

### *Division 1—General*

#### **Court jurisdiction generally unaffected**

47. This Act does not affect the jurisdiction a court has apart from this Act in relation to a child charged with an offence, unless this Act otherwise provides.

#### **Application of Part 4 of Mental Health Act 1974**

48.(1) Part 4 of the *Mental Health Act 1974*—

- (a) applies to a child charged with an indictable offence as it applies to an adult; and
- (b) does not apply to a child charged with a simple offence.

(2) For the purposes of subsection (1), in Part 4 of the *Mental Health Act 1974*—

- (a) mention of a prisoner within the meaning of the *Corrective Services Act 1988* is taken to mean a child detained under a

detention order; and

- (b) mention of a prison is taken to mean a detention centre; and
- (c) mention of the Queensland Corrective Services Commission is taken to mean the department; and
- (d) mention of the Queensland Community Corrections Board is taken to mean the chief executive.

### **Childrens Court Judge**

**49.** A Childrens Court Judge has jurisdiction—

- (a) to hear and determine under section 72 (Jurisdiction of Childrens Court Judge over committed child) a charge against a child for an offence; and
- (b) to delegate sentencing power to a Childrens Court Magistrate under section 126 (Judge may delegate sentencing power to Magistrate); and
- (c) to review under section 88 (Sentence review) a sentence order imposed by a Childrens Court Magistrate; and
- (d) to hear bail applications under section 46 (Childrens Court Judge may grant bail); and
- (e) to order the transfer of a person to a prison under section 211 (Childrens Court may order transfer to prison).

### **District Court jurisdiction in aid**

**50.(1)** For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court Judge under this Act, a Childrens Court Judge has the powers and jurisdiction of a District Court in its criminal jurisdiction.

**(2)** The powers and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

**(3)** To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

**Childrens Court Magistrate**

**51.(1)** All proceedings under the *Justices Act 1886* for the hearing and determination of charges against children for offences, including committal proceedings, must be heard and determined before a Childrens Court Magistrate.

(2) A Childrens Court Magistrate has jurisdiction to hear and determine the proceedings.

(3) A Magistrates Court and justices conducting committal proceedings do not have that jurisdiction.

**Magistrates Court jurisdiction in aid**

**52.(1)** For the purpose of the jurisdiction over persons and matters assigned to a Childrens Court Magistrate under this Act, a Childrens Court Magistrate has the powers, authorities and jurisdiction of a Magistrates Court under the *Justices Act 1886*.

(2) The powers, authorities and jurisdiction conferred under subsection (1) are in addition to those otherwise conferred under this Act.

(3) To the extent that another provision of this Act is inconsistent with subsection (1), the other provision prevails.

**Application of usual laws where necessary**

**53.(1)** Subject to subsections (2) and (3), for the purposes of the powers and jurisdiction of a Childrens Court conferred by this Act, the provisions of the Criminal Code, *Justices Act 1886* and other Acts apply to—

- (a) the institution and conduct of a proceeding before a Childrens Court; and
- (b) the exercise by a Childrens Court of its powers and jurisdiction; and
- (c) the enforcement of an order made by a Childrens Court.

(2) Provisions applied under subsection (1) apply, with all necessary modifications and any prescribed modifications—

- (a) in relation to a Childrens Court Judge in the way they apply in

relation to a District Court; and

- (b) in relation to a Childrens Court Magistrate in the way they apply in relation to a Magistrates Court.

(3) To the extent that another provision of this Act is inconsistent with a provision applied under subsection (1), the other provision of this Act prevails.

### **Limitation on justices**

**54.(1)** If the Childrens Court is constituted by 2 justices, the court's jurisdiction in relation to a proceeding against a child for an offence is limited to—

- (a) the hearing and determination of a charge of a simple offence in a case where the child pleads guilty; and
- (b) taking or making a procedural action or order.

(2) The justices cannot make a detention order or immediate release order.

(3) This section does not affect a limitation placed on the power of a justice under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **Infringement notices**

**55.(1)** If, under an Act, an adult may elect to pay a monetary penalty prescribed under the Act in relation to a simple offence instead of being prosecuted on complaint and summons for the offence, a child may also elect to pay the monetary penalty instead of being prosecuted.

(2) Part 4A of the *Justices Act 1886* does not apply to an offence committed by a child.

### **Presence of parent required generally**

**56.(1)** If a parent of a child is not present when the child appears before the court charged with an offence, the court, after making inquiries of those present as to—

- (a) the whereabouts of the child's parents; and
- (b) whether a parent of the child has been informed of the proceedings as required under section 22 (Parent and chief executive must be advised of arrest of child), 28 (Parent and chief executive must be advised of service of attendance notice on child) and 32 (Service of complaint and summons if offender a child);

may adjourn the proceeding to enable a parent to be present at the time and place to which the proceeding is adjourned.

(2) The court may recommend that the chief executive provide financial assistance to a parent of the child to ensure that a parent is present at the proceeding.

### **Consequence of parent's absence**

**57.(1)** This section applies if a parent of a child against whom a finding or order has been made in a proceeding for an offence satisfies the court on application that—

- (a) the child was dealt with when no parent was present; and
- (b) the parent making the application was—
  - (i) not aware of the time and place of the proceeding in sufficient time to allow the parent to be present; or
  - (ii) unable to attend for sufficient reason.

(2) The court may set aside the finding or order if it considers that it is in the interests of justice to do so, for example if it considers that the child's capacity to make an election or other decision relating to the proceeding was adversely affected.

(3) The matter determined by the finding or order must then be heard and determined afresh.

(4) The application must be made within 28 days of the finding or order.

### **Explanation of proceeding**

**58.(1)** In a proceeding before a court in which a child is charged with an



offence, the court must take steps to ensure, as far as practicable, that the child and any parent of the child present has full opportunity to be heard and participate in the proceeding.

(2) Without limiting subsection (1), the court must ensure that the child and parent understand, as far as practicable—

- (a) the nature of the alleged offence, including the matters that must be established before the child can be found guilty; and
- (b) the court's procedures; and
- (c) the consequences of any order that may be made.

(3) Examples of the steps a court may take are—

- (a) directly explaining these matters in court to the child and parent; and
- (b) having some appropriate person give the explanation; and
- (c) having an interpreter or another person able to communicate effectively with the child and parent give the explanation; and
- (d) causing an explanatory note in English or another language to be supplied to the child and parent.

### **Ordinary practice applies to explanations if child is represented**

59. This Part does not—

- (a) prevent an explanation required to be given to a person, or an inquiry required to be made of a person, from being given to or made of a legal practitioner representing the person; or
- (b) prevent the legal practitioner from responding to the explanation or inquiry on behalf of the person.

### **Chief executive's right of audience generally**

60.(1) In a proceeding before a court in which a child is charged with an offence, the chief executive or a legal practitioner acting for the chief executive is entitled to be heard by the court in relation to the matters mentioned in subsection (2), even though the chief executive is not a party to the proceeding.

(2) The matters are—

- (a) adjournment of the proceeding; and
- (b) matters relating to the custody or release from custody of the child pending completion of the proceeding; and
- (c) sentence orders that may be made against the child; and
- (d) without limiting paragraphs (a) to (c)—matters on which the court considers the chief executive should be heard.

(3) In a proceeding before a court in which the chief executive is a party, the chief executive may appear and be represented by another officer of the department.

### **Adjournment power generally**

**61.(1)** If it appears to the Childrens Court that a proceeding before it in relation to an offence could be more conveniently, economically or fairly heard before the Childrens Court at another place, the court may adjourn the hearing to that other place.

(2) The remand, bail and custody provisions of Part 3 apply to the adjournment.

### **Publication prohibited**

**62.(1)** In this section—

“**criminal proceeding**” means a proceeding taken in Queensland against a child for an indictable or simple offence;

“**identifying matter**” means—

- (a) the name, address, school, place of employment or any other particular likely to lead to the identification of the child charged in the criminal proceeding; or
- (b) any photograph, picture, videotape or other visual representation of the child or of another person that is likely to lead to the identification of the child charged in the criminal proceeding;

“**publish**” means publish in Queensland or elsewhere to the general public by means of television, newspaper, radio or any other form of

communication.

(2) A person must not publish an identifying matter in relation to a criminal proceeding.

Maximum penalty (subject to Part 5)—

- (a) in the case of a body corporate—200 penalty units;
- (b) in the case of an individual—100 penalty units, imprisonment for 6 months or both.

### **One year limitation inapplicable if indictable offence dealt with summarily**

**63.(1)** The purpose of this section is to ensure that a child may elect to have an indictable offence dealt with before a Childrens Court Magistrate despite delay in prosecution.

(2) A Childrens Court Magistrate may exercise jurisdiction under this Part in relation to an indictable offence even though more than 1 year has passed since the offence was committed.

### **Court to refrain from inappropriate summary hearing of indictable offence**

**64.(1)** This section applies if a Childrens Court Magistrate (“**the court**”) has jurisdiction to hear and determine summarily a charge against a child of an indictable offence (subject to the consent of the child).

(2) The court must refrain from exercising the jurisdiction unless it is satisfied that the charge can be adequately dealt with summarily by the court.

(3) The court may initially decide to exercise the jurisdiction on submissions made by the parties.

(4) If at any stage of the proceeding the court decides that the charge cannot be adequately dealt with summarily by the court, any further proceeding before the court must be conducted as a committal proceeding.

### **Procedural elections under this Act in relation to an indictable offence replace other elections**

**65.** The rules set out in this Part relating to election by a child of procedure in relation to an indictable offence apply despite any right of election that may be conferred on any person under any other Act.

### **Court to check child's legal representation**

**66.** If a child appears before a court charged with an indictable offence but is not represented by a legal practitioner, the court may proceed with a hearing and determination only if it is satisfied that—

- (a) the child has had reasonable opportunity to obtain representation by a legal practitioner; and
- (b) has decided not to be represented by a legal practitioner.

### **Use of adduced evidence after change of procedure**

**67.(1)** This section applies if a proceeding before a court (“**former proceeding**”) changes into another proceeding (“**new proceeding**”) before the court because of—

- (a) an election or change of an election under this Act; or
- (b) a decision of a court to refrain from exercising summary jurisdiction in relation to an indictable offence; or
- (c) a decision of a court to remove the proceeding to its concurrent jurisdiction on discovering a misapprehension affecting the court's treatment of the defendant as a child or adult.

**(2)** If evidence has been adduced in the course of the former proceeding, the hearing again of the evidence in the new proceeding is at the discretion of the court.

**(3)** If the court decides against hearing the evidence again in the new proceeding, the evidence is taken to have been adduced by the party who adduced the evidence in the former proceeding.

**Division 2—Serious offence procedure****Application**

**68.** This Division applies to a proceeding before a Childrens Court Magistrate (“**the court**”) in which a child is charged with a serious offence.

**Committal proceeding only option**

**69.** The proceeding must be conducted as a committal proceeding.

**Election if trial results**

**70.(1)** This section only applies if, on consideration of all the evidence adduced on the committal proceeding, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence.

**(2)** If the child is represented by a legal practitioner, then, before ordering the child to be committed to be tried under section 108 of the *Justices Act 1886*, the court must explain to the child and any parent of the child who is present the child’s right of election mentioned in subsection (3).

**(3)** The child may elect—

- (a) to be committed to a court of competent jurisdiction (other than a Childrens Court Judge) for trial before a Judge and jury; or
- (b) to be committed for trial before a Childrens Court Judge sitting without a jury.

**(4)** After the explanation, the court must then ask the child whether the child consents to being tried before a Childrens Court Judge without a jury.

**(5)** If the child consents, the court must order the child to be committed to be tried by a Childrens Court Judge.

**(6)** If the child—

- (a) is not legally represented; or
- (b) if legally represented—does not give the consent mentioned in subsection (5);

the court must order the child to be committed to be tried before a court of

competent jurisdiction (other than a Childrens Court Judge).

(7) This section does not apply if a child enters a plea of guilty at the committal proceeding.

### **Election on plea of guilty**

**71.(1)** If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court Judge); or
- (b) to be committed for sentence before a Childrens Court Judge.

(3) The court must ask the child whether the child consents to being sentenced before a Childrens Court Judge.

(4) If the child consents, the court must order the child to be committed to be sentenced by a Childrens Court Judge.

(5) If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction (other than a Childrens Court Judge).

### **Jurisdiction of Childrens Court Judge over committed child**

**72.(1)** In this section—

**“committal charge”** means a charge on which a child is committed for trial or sentence before a Childrens Court Judge, and includes a charge arising out of the same, or same set of, circumstances.

(2) Subject to subsection (4), the Judge, sitting alone without a jury, may try the child on the committal charge if—

- (a) the child was committed for trial; or
- (b) the child was committed for sentence but a plea of not guilty is entered under section 73 (Child may change plea of guilty).

(3) Subject to subsection (4), the Judge may sentence the child on the committal charge and any other charge for an indictable offence on which

the child consents to being sentenced by the Judge.

(4) The child may withdraw the child's election to be tried before the Childrens Court Judge without a jury.

(5) The withdrawal of the election must happen before the child enters a plea to the committal charge.

### **Child may change plea of guilty**

**73.(1)** A child who appears before a Childrens Court Judge after being committed for sentence on an indictable offence is in all cases entitled to enter a plea of not guilty when called on to enter a plea under section 600 of the Criminal Code.

(2) To the extent that this section is inconsistent with section 600 of the Criminal Code, this section prevails.

(3) Evidence that the child previously entered a plea of guilty at the committal proceeding is not admissible in the trial following the change of plea.

### **Removal of proceeding to another jurisdiction**

**74.(1)** The Crown may apply to a Childrens Court Judge for the removal to another court of competent jurisdiction of a proceeding on a charge for an offence committed for trial before the judge on the ground that this would ensure that the child is jointly tried with another person.

(2) If the Judge is satisfied that—

- (a) the child should be tried with the other person; and
- (b) removing the proceeding would ensure that the committal of the proceeding before the Judge did not prevent this from happening;

the Judge may grant the request and remove the proceeding as requested.

(3) In removing the proceeding, the Judge may exercise power as if the proceeding had been brought before the wrong court.

(4) This section does not prevent the Childrens Court Judge presiding over the trial of the child in the Judge's concurrent jurisdiction.

**General laws relating to indictable offence apply**

**75.** Subject to this Division, the provisions of the Criminal Code or any other Act relating to the hearing and determination on indictment of an offence apply to a proceeding before a Childrens Court Judge under this Division.

***Division 3—Indictable offence (other than serious offence) procedure when child legally represented*****Application**

**76.** This Division applies to a proceeding before a Childrens Court Magistrate (“**the court**”) in which a child is—

- (a) charged with an indictable offence (other than a serious offence); and
- (b) represented by a legal practitioner.

**Explanation and election at start**

**77.(1)** Subject to section 64 (Court to refrain from inappropriate summary hearing of indictable offence), before evidence is adduced at the committal proceeding, the court must explain to the child and any parent of the child who is present the child’s right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to have the proceeding continue as a committal proceeding; or
- (b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

**(3)** The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

**(4)** If the child consents, the court must proceed to hear and determine the charge summarily.



(5) If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

### **Procedure on summary hearing**

**78.(1)** On proceeding to hear and determine the charge summarily, the court must—

- (a) reduce the charge to writing; and
- (b) ask the child whether the child is guilty or not guilty.

(2) If the child pleads guilty, the court must act under section 79 (Election on plea of guilty).

(3) If the child pleads not guilty, the court may proceed in the same way as is provided in section 146 of the *Justices Act 1886*.

### **Election on plea of guilty**

**79.(1)** If the child enters a plea of guilty at the committal proceeding, the court must explain to the child, and any parent of the child who is present, the child's right of election mentioned in subsection (2).

(2) The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction; or
- (b) to be sentenced by the Childrens Court Magistrate.

(3) The court must then ask the child whether the child consents to being sentenced by the Childrens Court Magistrate.

(4) If the child consents, the Childrens Court Magistrate must sentence the child.

(5) If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

***Division 4—Indictable offence (other than serious offence) procedure when child not legally represented***

**Application of Division**

**80.** This Division applies to a proceeding before a Childrens Court Magistrate (“**the court**”) in which a child is—

- (a) charged with an indictable offence (other than a serious offence); and
- (b) not represented by a legal practitioner.

**Start as committal proceeding**

**81.** The proceedings must be conducted as a committal proceeding until all the evidence has been adduced on the part of the prosecution.

**Explanation of election at end of prosecution case**

**82.(1)** Subject to section 64 (Court to refrain from inappropriate summary hearing of indictable offence), if after all the evidence to be offered on the part of the prosecution has been adduced, the court is of the opinion that the evidence is sufficient to put the child on trial for the offence the court must explain to the child, and any parent present in the court, the child’s right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to have the proceeding continue as a committal proceeding; or
- (b) to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court.

**(3)** The court must then ask the child whether the child consents to having the charge heard and determined summarily by the court.

**(4)** If the child consents, the court must discontinue the committal proceeding and proceed to hear and determine the charge summarily.

**(5)** If the child does not give the consent mentioned in subsection (4), the proceeding must continue as a committal proceeding.

**Procedure on summary hearing**

**83.(1)** On proceeding to hear and determine the charge summarily, the court must—

- (a) reduce the charge to writing; and
- (b) ask the child whether the child is guilty or not guilty.

**(2)** If the child pleads guilty, the court may act under section 84 (Election on plea of guilty).

**(3)** If the child pleads not guilty, the court may proceed in the same way as is provided in section 146 of the *Justices Act 1886*, subject to section 67 (Use of adduced evidence after change of procedure).

**Election on plea of guilty**

**84.(1)** If the child enters a plea of guilty during the committal proceeding, the court must explain to the child and any parent of the child who is present the child's right of election mentioned in subsection (2).

**(2)** The child may elect—

- (a) to be committed for sentence before a court of competent jurisdiction; or
- (b) to be sentenced by the Childrens Court Magistrate.

**(3)** The court must then ask the child whether the child consents to being sentenced by the Childrens Court Magistrate.

**(4)** If the child consents, the Childrens Court Magistrate must sentence the child.

**(5)** If the child does not give the consent mentioned in subsection (4), the court must order the child to be committed for sentence before a court of competent jurisdiction.

***Division 5—Rules applying if child and another person are charged*****Joint committal proceeding in relation to adult and child are allowed**

**85.** Despite section 21 of the *Childrens Court Act 1992*, a Magistrate

may at the same time conduct a committal proceeding—

- (a) as a Childrens Court Magistrate, in relation to a charge of an indictable offence brought against a child; and
- (b) as a justice, in relation to an indictable offence brought against an adult;

if, were the child an adult, a committal proceeding in relation to each offence would have been conducted at the same time against both persons.

**Prosecution may request a matter proceed as a committal to the Supreme or a District Court in order to ensure joint trial**

**86.(1)** The purpose of this section is to ensure that the operation of Divisions 2 to 4 does not prevent a child from being tried with another offender.

**(2)** Before a Childrens Court Magistrate commits a child for trial before a Childrens Court Judge on a charge of a serious offence, the prosecution may request that the child be committed for trial instead to another court of competent jurisdiction on the ground that this would ensure that the child will be tried jointly with another person.

**(3)** Before a Childrens Court Magistrate starts to hear and determine summarily a charge against a child for an indictable offence other than a serious offence, the prosecution may request that the proceeding be conducted or continued as a committal proceeding on the ground that this would ensure that the child will be jointly tried with another person.

**(4)** If the Childrens Court Magistrate is satisfied, after hearing the submissions of the parties—

- (a) that the child should be tried jointly with the other person; and
- (b) that granting the prosecution’s request would ensure that the operation of Divisions 2 to 4 did not prevent this from happening;

the Magistrate must grant the request and proceed as for the committal of the child for trial on the offence in accordance with the request.

**(5)** Subsection (4) has effect despite Divisions 2 to 4.

**Appeal rights generally**

**87.(1)** This Part does not affect the right of any person to appeal, or apply for leave to appeal, under the Criminal Code or the *Justices Act 1886* against an order of a court or judicial officer.

**(2)** In addition to the right to apply for a review of a sentence order under section 88 (Sentence review), a child has the same right as an adult to appeal against the order.

**(3)** The provisions of Chapter 67 of the Criminal Code, and Part 9 of the *Justices Act 1886*, relating to appeals or applications for leave to appeal apply, with necessary modifications and any prescribed modifications—

- (a) in relation to a finding of guilt or order made in a proceeding against a child for an offence as it applies in relation to a conviction or order made in a proceeding against an adult for an offence; and
- (b) in relation to a proceeding before a Childrens Court Magistrate as it applies to a proceeding before a Magistrates Court; and
- (c) in relation to a proceeding before a Childrens Court Judge as it applies in relation to a proceeding before a District Court.

**Sentence review**

**88.** A Childrens Court Judge on application may review a sentence order made by a Childrens Court Magistrate.

**Application for review**

**89.(1)** An application may be made by—

- (a) a child against whom the sentence order was made; or
- (b) the chief executive acting in the interests of the child.

**(2)** An application must be made—

- (a) in the way allowed by the Childrens Court Rules; and
- (b) within 14 days after the sentence order is made or within a later period that may at any time be allowed by the Childrens Court Judge.

**Preliminary procedure**

**90.**The proper officer of the Childrens Court at the place where the Childrens Court Judge is sitting must notify the applicant and all other parties of the place and time for the hearing of the application.

**Stay of proceeding and suspension of orders**

**91.(1)** Without affecting—

- (a) another power to stay the effect of an order of a court; or
- (b) the operation of a law that has that effect;

a Childrens Court Judge may order a stay of all or any proceedings under a sentence order that is subject to a review application under this Division.

**(2)** The Childrens Court Judge may impose conditions the Judge considers appropriate on the stay.

**Conduct of review**

**92.(1)** A review of a sentence must be by way of rehearing on the merits.

**(2)** The Childrens Court Judge may have regard to—

- (a) the record of the proceeding before the Childrens Court Magistrate; and
- (b) any further submissions and evidence by way of affidavit or otherwise.

**(3)** The review of a sentence order must be conducted expeditiously and with as little formality as possible.

**Review decision**

**93.(1)** On reviewing a sentence order, a Childrens Court Judge may—

- (a) confirm the order; or
- (b) vary the order; or
- (c) discharge the order and substitute another order within the jurisdiction of a Childrens Court Magistrate to make.

(2) The Judge may also make any other order a Childrens Court Magistrate could have made in connection with the sentence order as confirmed, varied or substituted under subsection (1).

### **Interrelation with other types of appeal**

**94.(1)** In this section—

**“ordinary appeal”** means—

- (a) an appeal or application for leave to appeal under Chapter 67 of the Criminal Code; or
- (b) an appeal under Part 9 of the *Justices Act 1886*;

**“sentence review”** means a review under section 88 (Sentence review) of a sentence order.

(2) If a child starts a proceeding for an ordinary appeal against a sentence order—

- (a) an application for a sentence review of the sentence order cannot be started; and
- (b) if an application for a sentence review of the sentence order is pending at the start of the proceeding for an ordinary appeal—the application for the sentence review lapses.

(3) If—

- (a) a child starts a proceeding for an ordinary appeal against a finding of guilt made against the child in relation to which a sentence order was made; or
- (b) a person other than a child against whom a sentence order has been made starts a proceeding for an ordinary appeal against the sentence order;

a Childrens Court Judge cannot proceed to hear and determine any pending application for a sentence review against the sentence order until the ordinary appeal is finished.

### **Incidents of review**

**95.(1)** No costs may be ordered against a party on a sentence review.

- (2) The decision of a Childrens Court Judge on a sentence review—
- (a) takes effect as the decision of the Childrens Court Magistrate who made the sentence order reviewed; and
  - (b) subject to subsection (2), may be enforced or appealed against in the same way as the decision of the Childrens Court Magistrate.
- (3) Subsection (2) does not authorise—
- (a) a further review by a Childrens Court Judge of a sentence already reviewed under this Division by a Childrens Court Judge; or
  - (b) an appeal to a District Court Judge under section 222 of the *Justices Act 1886*.

### **Orders at end of reviews**

**96.(1)** Subject to section 232, if as a result of the decision of the Childrens Court Judge on a sentence review, a child is required to serve a period of detention or the unserved part of a period of detention, the Judge, as part of the order on the appeal, must direct that a warrant be issued to arrest the child and commit the child to a detention centre.

- (2) Any justice may issue the warrant.

### ***Division 7—Mistake in exercise of jurisdiction***

#### **Meaning of proceeding**

**97.** In this Division—

“**proceeding**” means a proceeding for the hearing and determination of a charge of an offence.

#### **Correction of error by court making order**

**98.(1)** For the purpose of correcting an error in a proceeding, a Childrens Court Magistrate has the same power as a Magistrates Court to reopen the proceeding and correct the error.

- (2) For the purpose of applying section 147A of the *Justices Act 1886*—



- (a) mention in the section of a conviction includes a finding of guilt; and
- (b) if the defendant affected is a child, the persons who may apply under the section include the chief executive acting in the interests of the child.

(3) Section 188 of the *Penalties and Sentences Act 1992* applies in relation to a Childrens Court Judge.

(4) This section does not affect the power of a court under another section of this Division.

### **Removal of a proceeding because of lack of jurisdiction**

**99.(1)** If a court is satisfied that it does not have jurisdiction to hear and determine a proceeding before it because of this Act, it may remove the proceeding to a court of competent jurisdiction.

(2) To remove and deal with the proceeding that remains before it, the court may—

- (a) give directions it considers necessary; and
- (b) take or make any procedural action or order the court of competent jurisdiction could take or make.

(3) Subsection (2) does not limit any other power the court may have to deal with the proceeding.

### **Lack of jurisdiction discovered in course of a proceeding**

**100.(1)** This section applies if, in the course of a proceeding, a court finds that it does not have jurisdiction to hear and determine the proceeding because of this Act.

(2) If the court has the necessary jurisdiction in its concurrent jurisdiction, it may continue the proceeding in the concurrent jurisdiction.

(3) If the court does not act under subsection (2), it may deal with the proceeding under section 99 (Removal of a proceeding because of lack of jurisdiction).

**Lack of jurisdiction discovered after proceeding ends**

**101.(1)** This section applies if a finding or order has been made in a proceeding—

- (a) on the assumption that the person charged was a child, when the person was an adult; or
- (b) on the assumption that the person charged was an adult, when the person was a child.

**(2)** Application may be made to the court that made the finding or order to set aside the finding or order.

**(3)** The application may be made by—

- (a) a party to the proceeding; or
- (b) if the person charged in the proceeding was a child, the chief executive acting in the interests of the child; or
- (c) the Director of Prosecutions.

**(4)** The application must be made—

- (a) within 28 days after the error is discovered by the applicant; or
- (b) by a later day that the court may at any time allow.

**(5)** On hearing the application, the court may set aside the finding or order and—

- (a) make the finding or order the court considers should have been made in the first place, if necessary after deciding what facts the court when differently constituted must have been found when making the finding or order set aside; or
- (b) take any action or make any order that could have been made by the court if it had discovered the error immediately before making the finding or order.

**(6)** A court cannot set aside an acquittal under this section or an order dismissing a charge or discharging a person.

***Division 8—Special sentencing provisions relating to detainee***

**Extension of Act for detainee offender**

**102.(1)** In this section—

“**detainee**” means a person serving a period of detention under a sentence order.

**(2)** If—

- (a) a proceeding is started against a detainee for an offence committed within the period of 1 year after the detainee ceased to be a child; and
- (b) the proceeding is started within 1 year of the commission of the offence;

the detainee may be treated as a child for the purpose of the proceeding.

**(3)** A court may treat the detainee as a child if it considers this appropriate, for example because—

- (a) treatment of the detainee as an adult would disrupt the application of an existing sentence order; or
- (b) the offence was committed in a detention centre in circumstances suggesting that the detainee should be treated as a child in relation to the offence; or
- (c) a recommendation made by the chief executive or in a presentence report supports the treatment of the detainee as a child.

**(4)** A court may act under this section on application by a party to the proceeding or on its own initiative.

***Division 9—Child offenders who become adults*****Interpretation**

**103.** In this Division—

“**offence**” means the offence the offender committed as a child;

“**offender**” means a person who has—

- (a) committed an offence as a child; and

(b) since committing the offence become an adult;

“**sentence**”, in relation to an offender sentenced as an adult, includes orders made instead of sentence.

### **Offender treated as child**

**104.** Subject to this Division, the offender must be treated as a child for the purposes of this Act during any proceeding for the offence.

### **Offender treated as adult**

**105.(1)** If 1 year has passed after an offender has become an adult—

- (a) a proceeding afterwards started against the offender for the offence must be taken as if the offender were an adult at the time of the commission of the offence; and
- (b) if found guilty in the proceeding, the offender must be sentenced as an adult.

**(2)** If—

- (a) a proceeding has started against an offender for the offence in the way provided in this Act for a child; but
- (b) the proceeding has not been completed to a finding of guilty or not guilty by the time 1 year has passed after the offender becomes an adult;

then—

- (c) the proceeding must be finished in the way provided in this Act for a child; but
- (d) if found guilty, the offender must be sentenced as an adult.

**(3)** An offender must not be treated as an adult under this section if the court is satisfied that there was undue delay on the part of the prosecution in starting or completing the proceeding.

### **Sentencing offender**

**106.(1)** Subject to subsections (2) and (3), a court sentencing an offender

as an adult under section 105 (Offender treated as adult) has jurisdiction to sentence the offender in any way that an adult may be sentenced.

(2) The court must have regard to—

- (a) the fact that the offender was a child when the offence was committed; and
- (b) the sentence that might have been imposed on the offender if sentenced as a child.

(3) The court cannot order the offender—

- (a) to serve a term of imprisonment longer than the period of detention that the court could have imposed on the offender if sentenced as a child; or
- (b) to pay an amount by way of fine, restitution or compensation greater than that which the court could have ordered the offender to pay if sentenced as a child.

(4) Subsection (3) applies even though an adult would otherwise be liable to a heavier penalty which by operation of law could not be reduced.

### **Continuing effect on offender of orders made when child**

**107.(1)** An order that may be made under this Act against a child (“**the order**”) may be made even though the person concerned will have ceased to be a child before the order’s effect will have ceased under its terms.

(2) If a person against whom the order is made ceases to be a child before the order’s effect ceases under its terms—

- (a) the order continues to apply as if the person continued to be a child; and
- (b) other proceedings and orders arising out of the order that could have been taken or made in relation to the person had the person remained a child may be taken or made as if the person were a child.

***Division 1—Sentencing generally*****Jurisdiction to sentence child exclusive**

**108.(1)** A court that sentences a child for an offence must sentence the child under this Act.

**(2)** Subsection (1) applies despite any other Act or law.

**Sentencing principles**

**109.(1)** In sentencing a child for an offence, a court must have regard to—

- (a) subject to this Act, the general principles applying to the sentencing of all persons; and
- (b) the general principles of juvenile justice; and
- (c) the special considerations stated in subsection (2); and
- (d) the nature and seriousness of the offence; and
- (e) the child's previous offending history; and
- (f) any information about the child, including a presentence report, provided to assist the court in making a determination; and
- (g) any impact of the offence on a victim; and
- (h) a sentence imposed on the child that has not been completed; and
- (i) a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and
- (j) the fitting proportion between the sentence and the offence.

**(2)** Special considerations are that—

- (a) a child's age is a mitigating factor in determining whether or not to impose a penalty, and the nature of a penalty imposed; and
- (b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and
- (c) the rehabilitation of a child found guilty of an offence is greatly

assisted by—

- (i) the child's family; and
- (ii) opportunities to engage in educational programs and employment; and
- (d) a child who has no apparent family support, or opportunities to engage in educational programs and employment, should not receive a more severe sentence because of the lack of support or opportunity; and
- (e) a detention order should be imposed only as a last resort and for the shortest appropriate period.

(3) In sentencing a child for an offence, a court may receive any information it considers appropriate to enable it to impose the proper sentence or make a proper order in connection with the sentence.

### **Presentence report**

**110.(1)** A court, before it sentences a child found guilty of an offence, may order the chief executive to give to the court a presentence report concerning the child.

(2) The court may request that the report contain specified information, assessments and reports relating to the child or the child's family or other matters.

(3) Pending the giving of a presentence report, the court may adjourn the proceeding and remand the child in custody or exercise the powers conferred by Part 3 to grant bail to and release the child from custody.

(4) In releasing the child from custody, the court may impose conditions that it considers necessary to facilitate the preparation of the presentence report.

(5) The chief executive must cause the presentence report to be prepared and given to the court expeditiously and, in any case, no later than 15 working days of the department.

(6) The limit of 15 days may be extended by the court at any time if the chief executive satisfies the court that this would be in the interests of the child.

**Presentence report evidence**

**111.(1)** The court may request the author of a presentence report, or a person who gave a statement included in the report, to attend before the court in the way indicated by the court for the purpose of giving more information.

(2) The court may ask, and allow parties to the proceeding to ask, questions of a person attending the court under subsection (1).

(3) A court may give as much weight as it considers appropriate to a presentence report or answers given in response to questions under subsection (2).

**Disclosure of presentence report**

**112.(1)** If a presentence report is given to a court under section 110 (Presentence report), the court must give a copy of the report as soon as practicable—

- (a) to the prosecution; and
- (b) if the child is represented by a legal practitioner—the legal practitioner.

(2) If the child is not represented by a legal practitioner, the court must give the report to the child or a parent of the child present in the court.

**Finding of guilt as child may be disclosed while a child**

**113.(1)** A finding of guilt against a child by a court for an offence, whether or not a conviction has been recorded, is part of the criminal history of the child to which regard may be had—

- (a) by a court that subsequently sentences the child for any offence as a child; or
- (b) by any person or court whose duty it is subsequently to consider whether or not the child should be remanded in custody or released pending any proceeding in which the child is being dealt with for an offence as a child.

(2) Subsection (1) applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*.



**Evidence of childhood finding of guilt not admissible against adult**

**114.(1)** In a proceeding against an adult for an offence, there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded.

(2) Subsection (1) applies even though the evidence would otherwise be admissible under section 15 of the *Evidence Act 1977* and section 5(3)(b) of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

(3) This section does not prevent a court that is sentencing an adult from receiving information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

**Mandatory sentence provisions inapplicable**

**115.** A court that sentences a child for an offence—

- (a) must disregard a requirement under any other Act that an amount of money or term of imprisonment must be the minimum penalty for the offence; and
- (b) must take a requirement under any other Act that an amount of money or term of imprisonment must be the only penalty for the offence as providing instead that the amount or term is the maximum penalty for the offence.

**Preference to be given to compensation and restitution**

**116.** If a court sentencing a child for an offence considers—

- (a) that it is appropriate to make both of the orders that the child pay—
  - (i) an amount by way of compensation or restitution; and
  - (ii) an amount by way of fine; and
- (b) that the child has insufficient resources to pay both amounts;

the court must give preference to ordering the child to pay only the compensation or restitution amount.

**Outstanding charge may be taken into account on sentence**

**117.(1)** A court sentencing a child for an offence may take into account an outstanding charge against the child in the same way an outstanding charge may be taken into account when an adult is sentenced.

**(2)** Section 189 of the *Penalties and Sentences Act 1992* applies for the purpose of subsection (1).

**Children entitled to explanation of sentence**

**118.(1)** When making an order sentencing a child for an offence a court must take steps to ensure that the child understands—

- (a) the purpose and effect of the order; and
- (b) the consequences (if any) that may follow if the child fails to comply with the requirements of the order.

**(2)** Examples of the steps a court may take are—

- (a) directly explaining these matters in court to the child; or
- (b) having some appropriate person give the explanation; or
- (c) having an interpreter or other person able to communicate effectively with the child give the explanation; or
- (d) causing an explanatory note in English or another language to be supplied to the child.

**(3)** Subsection (1) does not apply where the child's presence is not required at sentence.

**Copy of court order to be given to child, parent and chief executive**

**119.(1)** A court that makes an order sentencing a child for an offence must cause—

- (a) the order to be promptly reduced to writing by the proper officer of the court in the prescribed form; and
- (b) a copy of the order to be given to—
  - (i) the child; and
  - (ii) a parent of the child; and

(iii) the chief executive.

(2) If a person mentioned in subsection (1)(b) is not present in the court, the subsection—

- (a) is sufficiently complied with if the proper officer of the court serves a copy of the sentence order on the person; and
- (b) does not apply if the proper officer of the court is unable to ascertain the whereabouts of the person after reasonable inquiries.

(3) Failure to comply with subsection (1) does not affect the validity of the sentence order.

### ***Division 2—Orders on children found guilty of offences***

#### **Sentence orders—general**

**120.(1)** When a child is found guilty of an offence before a court, the court may—

- (a) reprimand the child; or
- (b) order the child to be of good behaviour for a period not longer than 1 year; or
- (c) order the child to pay a fine of an amount prescribed under an Act in relation to the offence; or
- (d) subject to subsection (3), order the child to be placed on probation for a period not longer than—
  - (i) if the court is not constituted by a Judge—1 year; or
  - (ii) if the court is constituted by a Judge and section 121 (Sentence orders—serious offences) does not apply—2 years; or
- (e) subject to subsection (3), if the child has attained the age of 13 years—order the child to perform unpaid community service for a period not longer than—
  - (i) if the child has not attained the age of 15 years at the time of sentence—60 hours; or
  - (ii) if the child has attained the age of 15 years at the time of

sentence—120 hours; or

- (f) order that the child be detained for a period not longer than—
  - (i) if the court is not constituted by a Judge—6 months; or
  - (ii) if the court is constituted by a Judge and section 121 (Sentence orders—serious offences) does not apply—2 years;

with or without an immediate release order under section 176 (Immediate release order).

(2) Only 1 order allowed by subsection (1) may be made by a court in sentencing a child for an offence.

(3) A probation order under subsection (1)(d) or a community service order may only be made against a child found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment.

(4) This section has effect subject to the *Childrens Court Act 1992*.

### **Sentence orders—serious offences**

**121.(1)** If a child is found guilty of a serious offence before a court presided over by a Judge (“**the court**”), the court, may—

- (a) order the child to be placed on probation for a period not longer than 3 years; or
- (b) make a detention order against the child under subsection (2) or (3).

(2) In relation to a serious offence other than a life offence, the court may order that the child be detained for a period not longer than—

- (a) a period equal to half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve; or
- (b) 7 years;

whichever is the shorter period.

(3) In relation to a serious offence that is a life offence, the court may order that the child be detained for a period not longer than—

- (a) 10 years; or

- (b) 14 years if—
  - (i) the offence involves the commission of violence against a person; and
  - (ii) the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

(4) This section does not limit a court's power to make an order under section 120 (Sentence orders—general).

### **Other orders**

**122.** A court that makes a sentence order against a child for an offence under section 120 (Sentence orders—general) or 121 (Sentence orders—serious offences), in addition to the order, may make 1 or more of the following orders—

- (a) an order allowed by Division 8 (Restitution and compensation) requiring the child—
  - (i) to make restitution of property; or
  - (ii) to pay compensation of not more than an amount equal to 20 penalty units for loss to property; or
  - (iii) to pay compensation for injury suffered by another person;
- (b) an order allowed by Division 9 (Application of *Traffic Act 1949*).

### **Orders may be combined in 1 form**

**123.(1)** This section applies if a court makes more than 1 sentence order against a child charged before it with more than 1 offence.

(2) The court may combine more than 1 of the sentence orders in 1 order form if each sentence order that the form deals with is—

- (a) of the same type; and
- (b) subject to similar conditions.

(3) The order form must contain, or have attached, a list of each offence for which the order form is made.

(4) In a proceeding, it is taken that a separate sentence order was made

for each offence.

### **Recording of conviction**

**124.(1)** Other than under this section, a conviction is not to be recorded against a child who is found guilty of an offence.

(2) If a court makes an order under section 120(1)(a) or (b) (Sentence orders—general), a conviction is not to be recorded.

(3) If a court makes an order under section 120(1)(c) to (f) (Sentence orders—general), the court may order that a conviction be recorded.

(4) If a court makes an order under section 121 (Sentence orders—serious offences), and the order is not allowed under section 120 (Sentence orders—general), a conviction is taken to be recorded.

### **Considerations whether or not to record conviction**

**125.(1)** In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including—

- (a) the nature of the offence; and
- (b) the child's age and any previous convictions; and
- (c) the impact the recording of a conviction will have on the child's chances of—
  - (i) rehabilitation generally; or
  - (ii) finding or retaining employment.

(2) Except as otherwise provided by this or another Act, a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.

(3) A finding of guilty against a child for an offence without the recording of a conviction stops a subsequent proceeding against the child for the same offence as if a conviction had been recorded.

### **Judge may delegate sentencing power to Magistrate**

**126.(1)** This section applies if—

- (a) a proceeding in which a child may be sentenced for an offence is before a Childrens Court Magistrate; and
- (b) the Childrens Court Magistrate considers that an appropriate sentence would be beyond the jurisdiction of the Childrens Court Magistrate because of the limit to the jurisdiction set out in section 120(1)(d) or (f) (Sentence orders—general).

(2) The Magistrate may request a Childrens Court Judge to delegate to the Magistrate the power to impose a sentence that, under section 120(1) (Sentence orders—general), may only be made if a Judge constitutes the sentencing court.

(3) The Childrens Court Judge has jurisdiction to delegate the power.

(4) The delegation must be made before any evidence is heard, plea entered or election made, unless the child—

- (a) is represented by a legal practitioner; and
- (b) consents to a delegation happening at a later time.

(5) The request and delegation may be made informally, including by any form of distance communication.

(6) The Magistrate must inform the child of the delegation.

### **Reference of case to Childrens Court Judge for sentence**

**127.(1)** If, in a proceeding for the sentencing of a child for an offence, a Childrens Court Magistrate considers that the circumstances require the making of a sentence order—

- (a) beyond the jurisdiction of a Childrens Court Magistrate; but
- (b) within the jurisdiction of a Childrens Court Judge;

the Magistrate may commit the child for sentence before a Childrens Court Judge.

(2) In relation to a committal under subsection (1), the Childrens Court Magistrate may make all orders and directions as if it were a committal following a committal proceeding.

(3) The Childrens Court Judge may exercise sentencing powers to the extent mentioned in section 120 (Sentence orders—general).

***Division 3—Good behaviour orders*****Good behaviour order**

**128.** A court that makes a good behaviour order against a child must impose a condition that the child abstains from violation of the law for the period of the order.

**Breach of conditions**

**129.(1)** If a person against whom a good behaviour order has been made commits an offence during the period of the order, a court that deals with the person on a charge for the offence may have regard to the breach of the good behaviour order when determining its sentence for the offence.

**(2)** Otherwise a court must not take any action in relation to a breach of a good behaviour order.

***Division 4—Fines*****Child's capacity to pay fine to be considered**

**130.** A court may make an order requiring a child to pay an amount by way of fine only if it is satisfied that the child has the capacity to pay the amount.

**Requirements of fine order**

**131.** An order made by a court requiring a child to pay a fine must direct that—

- (a) the fine be paid by a specified time or by specified instalments; and
- (b) the fine must be paid in the first instance to the proper officer of the court.

***Division 5—Probation orders***



**Probation orders—requirements**

**132.(1)** A probation order made against a child must require—

- (a) that the child must report in person to the chief executive within 1 business day after the order is made or any longer period that may be specified in the order; and
- (b) that, during the probation order—
  - (i) the child must abstain from violation of the law; and
  - (ii) the child must carry out the lawful instructions of the chief executive; and
  - (iii) the child must report and receive visits as directed by the chief executive; and
  - (iv) the child or a parent of the child must notify the chief executive within 2 business days of any change of address, employment or school; and
  - (v) the child must not leave, or stay out of, Queensland during the probation period, without the prior approval of the chief executive.

**(2)** A probation order made against a child may contain requirements that the child must comply during the whole or a part of the probation period with conditions that the court considers necessary or desirable for preventing—

- (a) a repetition by the child of the offence in relation to which the order was made; or
- (b) the commission by the child of other offences.

**(3)** A requirement imposed by a court under subsection (2)—

- (a) must relate to the offence for which the probation is made; and
- (b) must be supported by the court's written reasons.

**Child must be willing to comply**

**133.** A court may make a probation order against a child only if the child indicates willingness to comply with the requirements of the order.

**Chief executive's application on breach**

**134.(1)** If, in the chief executive's opinion, a child against whom a probation order has been made has contravened a requirement of the order or any other prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention, including the making of an application under this section.

**(2)** Subsection (1) does not apply if the child's whereabouts—

- (a) are unknown to the chief executive; and
- (b) cannot be reasonably ascertained.

**(3)** If, in the chief executive's opinion, a child against whom a probation order has been made—

- (a) has contravened a requirement of the order or a prescribed requirement relating to the order; and
- (b) if warned under subsection (1)—has continued to contravene the requirement after being warned under subsection (1);

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court Magistrate for a finding that a breach of the probation order has happened.

**(4)** The application may only be started during the period of the probation order.

**(5)** A copy of the complaint must be served on a parent of the child.

**(6)** If—

- (a) complaint is made before a justice that a child has breached a probation order; and
- (b) information is given on oath before the justice substantiating—
  - (i) the matter of the complaint; and
  - (ii) that either the whereabouts of the child cannot reasonably be ascertained or there are reasonable grounds for believing that the child would not appear in answer to a complaint and summons;

the justice, instead of issuing a complaint and summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought

before a Childrens Court Magistrate to be further dealt with according to law.

(7) A child arrested under the warrant must be treated, for the purpose of Part 3, as if arrested on a charge of an offence.

### **General options available to Childrens Court Magistrate on breach application**

**135.(1)** A Childrens Court Magistrate (“**the court**”), on application made under section 134 (Chief executive’s application on breach), if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any action allowed under section 140 (Specific powers if breach proved).

(3) If—

- (a) the probation order was made by the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the child dealt with for the offence in respect of which the order was made;

the court may take any action under section 140 (Specific powers if breach proved) other than under section 140(1)(c) (Specific powers if breach proved).

(4) If—

- (a) the probation order was made by the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

(5) On ordering a child to appear before another court under

subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or to appear before that other court.

### **General options available to superior court to which child committed for breach**

**136.(1)** The Supreme Court, District Court or Childrens Court Judge before which a child appears under an order under section 135 (General options available to Childrens Court Magistrate on breach application), if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 134 (Chief executive's application on breach), may take any action allowed by section 140 (Specific orders if breach proved).

(2) The proceeding before the Supreme Court, District Court or Childrens Court Judge must be heard and determined by a judge sitting without a jury.

### **General options available to court before which child found guilty of an indictable offence**

**137.(1)** If a child who is subject to a probation order is found guilty of an indictable offence, the court before which the child is found guilty ("**the court**") may exercise the powers mentioned in subsections (2) to (5).

(2) If the probation order was made by the court, the court may take any action allowed by section 140 (Specific powers if breach proved).

(3) If—

- (a) the probation order was not made by the court; and
- (b) the court considers that the circumstances of the indictable offence do not make it desirable that the probation order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may take any action under section 140 (Specific powers if breach proved) other than under section 140(1)(c).

(4) If—

- (a) the probation order was not made by the court; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may—

- (c) order the child to appear before the court that made the order; or
- (d) if the court may act under section 138 (Court may resentence child originally sentenced by lower court)—act under the section.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or to appear before the other court.

### **Court may resentence child originally sentenced by lower court**

**138.(1)** If—

- (a) the court mentioned in section 137(1) (General options available to court before which child found guilty of an indictable offence) is the Supreme Court, a District Court or a Childrens Court Judge; and
- (b) the probation order was made by a Childrens Court Magistrate; and
- (c) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) (Specific powers if breach proved) to make any sentence order a Childrens Court Magistrate could make in the same circumstances.

(2) A sentence order made under subsection (1)—

- (a) for the purposes of an appeal is taken to be a sentence order made on indictment; but
- (b) for all other purposes is taken to be a sentence order made by a Childrens Court Magistrate.

**(3) If—**

- (a) the court is the Supreme Court; and
- (b) the probation order was made by a District Court or a Childrens Court Judge (the “**lower court**”); and
- (c) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may act under section 140(1)(c) (Specific powers if breach proved) to make any sentence order the lower court could make in the same circumstances.

**(4)** A sentence order made under subsection (3) is taken to be a sentence order made by the lower court mentioned in the subsection.

### **General options available to court to which child committed for breach by indictable offence**

**139.(1)** The court before which a child appears under an order under section 137(4)(c) (General options available to court before which child found guilty of an indictable offence) may take any action allowed by section 140 (Specific powers if breach proved).

**(2)** If the proceeding is before the Supreme Court, District Court or Childrens Court Judge, the proceeding must be heard and determined by a judge sitting without a jury.

### **Specific powers if breach proved**

**140.(1)** A court that acts under this section may—

- (a) vary any of the requirements of the probation order (other than the requirement that the child abstain from violation of the law); or
- (b) extend the period of the probation order but not so that it is longer than the period allowed by section 120(1)(d) (Sentence orders—general) and section 121(1)(a) (Sentence orders—serious offences) in relation to the offence for which the order was made;

or

- (c) discharge the probation order and resentence the child for the offence for which the order was made, as if the child had just been found guilty before the court of that offence; or
- (d) on the undertaking of the child to comply in all respects with the requirements of the probation order and all prescribed requirements applicable to the child because of the order, take no further action.

(2) A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the probation order as varied.

(3) An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

(4) An order may be made under this section even though, at the time it is made, the probation order in relation to which the order is made is no longer in force because the period of the probation order has ended.

(5) For the purpose of subsection (4), the probation order is taken to continue in force until a proceeding under this section is heard and determined.

### **Variation, discharge and resentence in the interests of justice**

**141.(1)** If a probation order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, the court that made the probation order may—

- (a) vary the requirements of the probation order (other than the requirement that the child abstain from violations of the law); or
- (b) discharge the probation order; or
- (c) discharge the order and resentence the child for the offence in respect of which the probation order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the probation order was made.

(2) Notification of the making of an application under subsection (1) must be given—

- (a) if the application is made by or on behalf of the child—by the applicant to the chief executive; or
- (b) if the application is made by the chief executive—by the chief executive to the child.

(3) An application cannot be made on the grounds that the child has contravened a requirement of the probation order or a prescribed requirement applicable to the child because of the probation order.

(4) A child cannot be sentenced under subsection (1)(c) to a greater penalty, for example a greater degree of restriction on liberty, than would be the case if the balance of the probation order were served.

### **Compliance with existing order relevant to further order**

**142.** A court that resents a child for an offence after discharging a probation order under section 140(1)(c) (Specific powers if breach proved) or section 141(1)(c) (Variation, discharge and resentence in the interests of justice) must have regard to—

- (a) the making of the probation order; and
- (b) anything done by the child in compliance with the order.

### **Affidavits may be used in certain proceedings**

**143.(1)** In a proceeding before a court under section 134 (Chief executive's application on breach), 135 (General options available to Childrens Court Magistrate on breach application), 136 (General options available to superior court to which child committed for breach), 139 (General options available to court to which child committed for breach by indictable offence) or 141 (Variation, discharge and resentence in the interests of justice), evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.



(3) The court may make an order under subsection (2) of its own initiative or on the application of a party to the proceedings.

### **Notice of discharge etc. of probation order**

**144.** If a court in the exercise of jurisdiction under sections 134 (Chief executive's application on breach) to 141 (Variation, discharge and resentence in the interests of justice) affects the terms or operation of a probation order made against a child, it must cause written notice of the exercise of the jurisdiction to be given to—

- (a) the child; and
- (b) the chief executive; and
- (c) if that court is not the court that made the probation order to which the application for exercise of the jurisdiction applied—to the court that made the order.

### **Variations by consent**

**145.(1)** Despite any other provision of this Division, the proper officer of a court by which a probation order has been made against a child, on application, may make an order amending the requirements of the order, other than the requirement that the child abstain from violations of the law.

(2) An application—

- (a) may be made—
  - (i) by or on behalf of the child; or
  - (ii) by the chief executive; and
- (b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the probation order.

(3) The proper officer of the court must note the amendment of the requirements of the probation order on the court's record of the probation order.

(4) The period of a probation order cannot be amended under an

application.

### ***Division 6—Community service orders***

#### **Preconditions to making of community service order**

**146.** A court may make a community service order against a child only if—

- (a) the child indicates willingness to comply with the requirements of the order; and
- (b) the court is satisfied that the child is a suitable person to perform community service; and
- (c) the court is satisfied on consideration of a report by the chief executive that community service of a suitable nature can be provided for the child.

#### **Requirements to be set out in community service order**

**147.** A community service order must contain requirements—

- (a) that the child report in person to the chief executive within 1 business day after the order is made or any longer period that is specified in the order; and
- (b) that the child perform in a satisfactory way for the number of hours specified in the order the community service that the chief executive directs the child to perform; and
- (c) that the child, while performing community service, comply with every reasonable direction of the chief executive; and
- (d) that the child inform the chief executive of every change in the child's place of residence within 2 business days of the change.

#### **Obligation of chief executive**

**148.** The chief executive, in giving directions to a child in relation to the child's performance of community service, is—

- (a) to avoid, if practicable, conflicts with the religious and cultural beliefs and practices of the child or the child's parent; and
- (b) to avoid, if practicable, interference with the child's attendance at a place of employment or a school or other educational or training establishment; and
- (c) to take all steps necessary to ensure that the child, if practicable, is kept apart from any adult under sentence for an offence.

### **Community service to be performed within limited period**

**149.** A child against whom a community service order is made must perform the number of hours of community service specified in the order—

- (a) within the period of 6 months starting on the date of the order; or
- (b) within any extended period that a court may order under section 156 (Specific powers if breach proved) or section 158 (Variation, discharge or resentence in the interests of justice); or
- (c) any extended period allowed by order of the proper officer of the court under section 163 (Variations by consent).

### **Multiple or successive community service orders**

**150.** A court—

- (a) may make 2 or more community service orders against a child in respect of 2 or more offences; and
- (b) may make a community service order against a child who is already subject to an existing community service order.

### **Limitation on number of hours of community service**

**151.(1)** Subject to subsections (2) and (3), the community service hours specified in a community service order must not be less than 20.

**(2)** If—

- (a) a court makes 2 or more community service orders against a child found guilty of 2 or more offences; and

(b) the child is not subject to an existing community service order;

the total of the community service hours specified in the orders must not be less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e) (Sentence orders—general) for 1 offence.

(3) If—

(a) a court makes 1 or more community service orders against a child; and

(b) the child is subject to 1 or more existing community service orders;

the total of the community service hours specified in all the orders, less the number of hours for which the child has performed community service under the existing order or orders, must not be not less than 20 or more than the maximum appropriate to the child allowed by section 120(1)(e) (Sentence orders—general) for 1 offence.

(4) To the extent that the total exceeds the maximum allowed, the order or orders made by the court is or are of no effect.

(5) Every community service order made against a child operates cumulatively to every other community service order made against the child, unless the court that makes a community service order directs otherwise.

### **Ending of community service order**

**152.** A community service order made against a child remains in effect until—

(a) the child has performed community service in accordance with the requirements specified under section 147(b) and (c) (Requirements to be set out in community service order) for the number of hours specified in the order; or

(b) the order is discharged under section 156 (Specific powers if breach proved) or 158 (Variation, discharge or resentence in the interests of justice); or

(c) the expiry of the period within which the community service is required to be performed under section 149 (Community service to be performed within limited period);

whichever first happens.

### **Chief executive's application on breach**

**153.(1)** If the chief executive is of the opinion that a child against whom a community service order has been made has contravened a requirement of the order or a prescribed requirement relating to the order, the chief executive must warn the child of the consequences of further contravention including the making of an application under this section.

**(2)** Subsection (1) does not apply if the child's whereabouts—

- (a) are unknown to the chief executive; and
- (b) cannot reasonably be ascertained.

**(3)** If, in the chief executive's opinion, a child against whom a community service order has been made—

- (a) has contravened a requirement of the order or a prescribed requirement relating to the order; and
- (b) if warned under subsection (1)—has continued to contravene a requirement of the order after being warned;

the chief executive, by way of complaint and summons served on the child, may apply to a Childrens Court Magistrate for a finding that the child has breached the order.

**(4)** A copy of the complaint must be served on a parent of the child.

**(5)** If—

- (a) a complaint is made before a justice that a child has breached a community service order; and
- (b) information is given on oath before the justice substantiating—
  - (i) the matter of the complaint; and
  - (ii) that either the whereabouts of the child cannot reasonably be ascertained or there are reasonable grounds for believing that the child would not comply with a summons;

the justice, instead of issuing a summons, may issue in the first instance a warrant to arrest the child and to cause the child to be brought before a Childrens Court Magistrate to be further dealt with according to law.

(6) A child arrested under the warrant for the purposes of Part 3 must be treated as if arrested on a charge of an offence.

### **General options available to Childrens Court Magistrate on breach application**

**154.(1)** A Childrens Court Magistrate (“**the court**”), on application made under section 153 (Chief executive’s application on breach), if satisfied beyond reasonable doubt that the contravention alleged in the application has happened, may exercise the powers mentioned in subsections (2) to (5).

(2) If the community service order was made by the court, the court may take any action allowed under section 156 (Specific powers if breach proved).

(3) If—

- (a) the community service order was made by the Supreme Court, a District Court, or a Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention do not make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may take any action under section 156 (Specific powers if breach proved) other than under section 156(1)(c).

(4) If—

- (a) the community service order was made by the Supreme Court, a District Court or Childrens Court Judge; and
- (b) the court considers that the circumstances of the contravention make it desirable that the order should be discharged and the child resentenced for the offence in respect of which the order was made;

the court may order the child to appear before the court that made the order.

(5) On ordering a child to appear before another court under subsection (4), the court may commit the child to custody or release the child as provided by Part 3 to be brought or appear before that other court.

**General options available to superior court to which child committed for breach**

**155.(1)** The Supreme Court, a District Court or a Childrens Court Judge before which a child appears under an order under section 154(4) (General options available to Childrens Court Magistrate on breach application), if satisfied beyond reasonable doubt of the matter alleged against the child in the application made by the chief executive under section 153 (Chief executive's application on breach), may take any action allowed by section 156 (Specific powers if breach proved).

**(2)** The proceeding before the Supreme Court, District Court or Childrens Court Judge must be heard and determined by a judge sitting without a jury.

**Specific powers if breach proved**

**156.(1)** A court that acts under this section may—

- (a) increase the number of hours for which the child is required to perform community service; or
- (b) extend the period within which the community service is required to be performed under the community service order beyond the period of 6 months starting on the date of the order; or
- (c) discharge the community service order and resentence the child as if the child had just been found guilty before the court of the offence; or
- (d) on the undertaking of the child to comply in all respects with the requirements of the community service order and all prescribed requirements applicable to the child because of the order, take no further action.

**(2)** A court may act under subsection (1)(a) only if the child expresses a willingness to comply with the requirements of the community service order as varied.

**(3)** An order under subsection (1)(b) may be made in conjunction with an order under subsection (1)(a).

**(4)** An order may be made under this section even though, at the time it is made, the community service order is no longer in force because the

period within which the community service was required to be performed, has ended.

(5) For the purpose of subsection (4), the community service order is taken to continue in force until the proceeding under this section is heard and determined.

### **Extension of time to perform community service**

**157.(1)** If a community service order is in force in relation to a child, on application made by or on behalf of the child or by the chief executive, a Childrens Court Magistrate may extend the period in which the community service is required to be performed under the order under section 149 (Community service to be performed within limited period) if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

- (a) if the application is made by or on behalf of the child—the applicant to the chief executive; or
- (b) if the application is made by the chief executive—the chief executive to the child.

### **Variation, discharge or resentence in the interests of justice**

**158.(1)** If a community service order is in force in relation to a child, on application made by or on behalf of the child or the chief executive, the court that made the order may—

- (a) extend the period in which the community service is required to be performed under the order under section 149 (Community service to be performed within limited period); or
- (b) reduce (without restriction) the number of hours for which the child is required to perform community service under the order; or
- (c) discharge the order; or
- (d) discharge the order and resentence the child for the offence in



respect of which the order was made as if the child had just been found guilty before the court of the offence;

if it appears to the court that this is in the interests of justice, having regard to circumstances that have arisen or become known since the order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

- (a) if the application is made by or on behalf of the child—the applicant to the chief executive; or
- (b) if the application is made by the chief executive—the chief executive to the child.

(3) An application cannot be made on the ground that the child has contravened a requirement of the order or a prescribed requirement applicable to the child because of the community service order.

(4) A child cannot be sentenced under subsection (1)(d) to a greater penalty, for example a greater degree of restriction on liberty, than would be the case if the balance of the community service order were served.

### **Compliance with existing order relevant to further order**

**159.** A court that resents a child for an offence after discharging a community service order under section 156(1)(c) (Specific powers if breach proved) or 158(1)(d) (Variation, discharge or resentence in the interests of justice) must have regard to—

- (a) the making of the community service order; and
- (b) anything done by the child in compliance with the community service order.

### **Affidavits may be used in certain proceedings**

**160.(1)** In a proceeding before any court under section 154 (General options available to Childrens Court Magistrate on breach application), 155 (General options available to superior court to which child committed for breach), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentence in the interests of justice), evidence by

affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question.

(2) The proceeding may be determined on evidence by affidavit alone, unless the court orders, in the interests of justice, that a person who has made an affidavit be called to give evidence in the proceeding.

(3) The court may make an order under subsection (2) on its own initiative or on the application of a party to the proceeding.

### **Notice of discharge etc. of community service order**

**161.** If a court in the exercise of jurisdiction under section 156 (Specific powers if breach proved), 157 (Extension of time to perform community service) or 158 (Variation, discharge or resentencing in the interests of justice) affects the terms or operation of a community service order made against a child, the court must cause written notice of the exercise of the jurisdiction to be given to—

- (a) the child; and
- (b) the chief executive; and
- (c) if the court is not the court that originally made the community service order—the court that made the order.

### **Compensation for personal injury**

**162.** The *Workers' Compensation Act 1990* applies to a child performing community service under a community service order as a worker (within the meaning of that Act) working under a contract of service with the Crown.

### **Variations by consent**

**163.(1)** Despite any other provision of this Division, the proper officer of a court by which a community service order has been made against a child, on application, may make an order varying the requirements of the order by—

- (a) reducing the number of hours of community service required to be performed; or

- (b) extending the period within which the community service is required to be performed.

**(2) An application—**

- (a) may be made—
  - (i) by or on behalf of the child; or
  - (ii) by the chief executive; and
- (b) must be supported by affidavit filed in the office of the proper officer deposing to the fact that the chief executive and the child consent to the making of the order to vary the requirements of the community service order.

**(3) The proper officer of the court must note the variation of the requirements of the community service order on the court's record of the order.**

***Division 7—Detention order***

***Subdivision 1—Initial order***

**Presentence report must be obtained before detention order sentence**

**164.** A court may make a detention order against a child only if it has first—

- (a) ordered the chief executive to prepare a presentence report; and
- (b) received and considered the report.

**Detention must be only appropriate sentence**

**165.** A court may make a detention order against a child only if the court, after—

- (a) considering all other available sentences; and
- (b) taking into account the desirability of not holding a child in detention;

is satisfied that no other sentence is appropriate in the circumstances of the

case.

### **Court's reasons for detention order to be stated and recorded**

**166.(1)** A court that makes a detention order against a child must—

- (a) state its reasons in court; and
- (b) cause the reasons to be reduced to writing and kept by the proper officer of the court with the documents relating to the proceeding.

**(2)** Subject to subsection (3), a court's failure to comply with subsection (1) does not affect the sentence order.

**(3)** A court considering the sentence order on appeal or review must take into account a failure to comply with subsection (1)(a) and give the failure the weight it considers appropriate.

### **Detention to be served in detention centre**

**167.(1)** Subject to this Act, a child who is sentenced to serve a period of detention must serve the period of detention in a detention centre.

**(2)** Subject to section 232, on making a detention order against a child, a court must issue its warrant in the prescribed form (if any) directing the Commissioner to take the child into custody and deliver the child to a detention centre determined by the chief executive.

**(3)** Subsection (2) does not apply if the court makes an immediate release order under section 176 (Immediate release order).

### **Commencement of detention period**

**168.(1)** A period of detention under a detention order takes effect from the day the court makes the detention order.

**(2)** Subsection (1) has effect subject to section 170 (Court may order detention period to be cumulative), section 174 (Period of custody on remand to be treated as detention on sentence) and subsection (3).

**(3)** If a child is required to serve a period of detention or the unserved part of a period of detention as a result of an appeal against a sentence order (including an application for a sentence review), the period or unserved part

takes effect from the start of the child's custody on sentence for the offence in question after the appeal.

### **Detention orders ordinarily concurrent**

**169.** If, at the time a court makes a detention order against a child for an offence, the child—

- (a) is serving; or
- (b) has been sentenced to serve;

a period of detention for another offence, the period of detention under the court's detention order must be served concurrently with the other period of detention, unless other provision is made under section 170 (Court may order detention period to be cumulative) or another Act.

### **Court may order detention period to be cumulative**

**170.(1)** If, at the time a court makes a detention order against a child for an offence, the child—

- (a) is serving; or
- (b) has been sentenced to serve;

a period of detention for another offence, the court may order the period of detention under the court's detention order to take effect from the end of the other period of detention.

**(2)** Subsection (1) applies even if the other period of detention has to be served concurrently or cumulatively with a period of detention for an offence other than the one for which the court makes the detention order.

### **Limitation on cumulative orders**

**171.(1)** A court making more than 1 detention order under section 120 (Sentence orders—general) against a child on the same day or in the same proceedings is not to direct that a detention order be served cumulatively with another of the detention orders if the total period of the detention orders would exceed—

- (a) when made by a Childrens Court Magistrate—6 months; or

(b) when made by another court—2 years.

(2) To the extent that the total exceeds the maximum allowed the orders are of no effect.

### **Period of escape or release pending appeal not counted as detention**

**172.** If a child serving a period of detention under a detention order—

- (a) is released from custody under Part 3 pending an appeal against the detention order (including an application for a sentence review); or
- (b) escapes from custody;

the period for which the child is absent from custody pending the appeal or escape, as the case may be, must not be counted as part of the period of detention.

### **Multiple orders of detention and imprisonment against person as adult and child**

**173.(1)** Sections 169 (Detention orders ordinarily concurrent) and 170 (Court may order detention period to be cumulative) extend to a case where—

- (a) at the time a court makes a detention order against a person as a child, the person is serving or has been sentenced to serve a term of imprisonment as an adult; or
- (b) at the time a court makes an order sentencing a person to a term of imprisonment as an adult, the person is serving or has been sentenced to serve a period of detention as a child;

as if a reference in the sections to a period of detention included a reference to the term of imprisonment mentioned in paragraph (a) or (b).

(2) Subject to subsection (4), if a person is liable to serve a term of imprisonment as an adult concurrently with a period of detention as a child, the period must be served as a term of imprisonment.

(3) The period of deprivation of liberty because of the term of imprisonment must be counted as part of the period of detention.

(4) An arrangement may be made between the chief executive and the Corrective Services Commission for the person to serve all or part of the term of imprisonment in a detention centre.

(5) The period of deprivation of liberty in the detention centre—

- (a) is a period of detention served; and
- (b) must be counted as part of the term of imprisonment.

### **Period of custody on remand to be treated as detention on sentence**

**174.(1)** Subject to subsections (2) and (3), if a child is sentenced to a period of detention for an offence, any period of time for which the child was held in custody pending the proceeding for the offence must be counted as part of the period of detention that is served in a detention centre.

(2) A period of time for which a child is also held in custody on sentence for another offence is not to be counted for the purposes of subsection (1).

(3) If the child is also held in custody pending another proceeding for another offence, the court may decide a period of custody that must be counted for the purposes of subsection (1), which may be the whole or part of the period of custody for which the child was held pending the other proceeding.

(4) The court may make a decision for the purpose of subsection (3) at sentence or any later time on the application of—

- (a) the child; or
- (b) the chief executive acting in the child's interests.

(5) The court must cause its decision to be noted in the documentation held by the proper officer of the court in relation to the detention order.

(6) Any period of custody of less than 1 day is not to be counted under subsection (1).

### ***Subdivision 2—Immediate release order***

**Purpose of immediate release order**

**175.** The purpose of this Subdivision is to provide for a final option instead of the detention of a child by allowing a court to immediately release the child into a structured program with strict conditions.

**Immediate release order**

**176.(1)** A court that makes a detention order against a child may immediately suspend the order and make an order (“**immediate release order**”) that the child be immediately released from detention.

**(2)** The child must be released from detention in accordance with the immediate release order.

**Immediate release order—requirements**

**177.(1)** An immediate release order must require—

- (a) that the child participate as directed by the chief executive in a program for a period not longer than 3 months (“**program period**”) that is recommended in the presentence report mentioned in section 179 (Presentence report must support immediate release order) and specified in the order; and
- (b) that during the program period the child abstain from violations of the law.

**(2)** An immediate release order made in relation to a child may contain requirements that the child comply during the whole or a part of the program period with conditions that the court considers necessary for preventing a repetition by the child of the offence in relation to which the detention order was made or the commission by the child of other offences.

**(3)** A requirement imposed by a court under subsection (2)—

- (a) must relate to the offence for which the detention order was made; and
- (b) must be supported by the court’s written reasons.



**Child must be willing to comply**

**178.** A court may make an immediate release order in relation to a child only if the child expresses willingness to comply with the requirements of the order.

**Presentence report must support immediate release order**

**179.** A court may make an immediate release order in relation to a child only if the presentence report considered by it before making the detention order in question indicates that—

- (a) the child is suitable for release from detention under an immediate release order; and
- (b) an appropriate program in which the child may participate is available on the child's release under the order.

**Effect of program period ending**

**180.** Subject to section 183 (Failure to comply with conditions of immediate release order), at the end of the program period the child is no longer liable to serve a period of detention under the detention order.

**Application of Workers' Compensation Act 1990**

**181.** The *Workers Compensation Act 1990* applies to a child performing unpaid duties under a program in which the child is participating under an immediate release order as a worker (within the meaning of that Act) working under a contract of service with the Crown.

**Suspension of program period**

**182.(1)** If, during the program period, a child for good reason is unable to participate in the program mentioned in section 177(1)(a) (Immediate release order—requirements), the chief executive may, by written notice given to the child, suspend the program period for a specified period.

**(2)** The period for which the program period is suspended is not to be counted as part of the program period.

**Failure to comply with conditions of immediate release order**

**183.(1)** If, at any time while a condition imposed on a child under an immediate release order has effect, the chief executive is satisfied that the child has failed to comply with the condition, the chief executive may obtain a warrant for the arrest of the child under subsection (2).

(2) If a justice is satisfied on complaint under oath by the chief executive that a child has failed to comply with a condition imposed by an immediate release order, the justice may issue a warrant directed to all police officers for the arrest of the child and for the child to be brought before the court that made the order to be further dealt with according to law.

(3) Part 3 applies to a child arrested on the warrant as if—

- (a) the child were arrested for an offence; and
- (b) references to the Childrens Court in the Part were references to the court before which the child is required by the warrant to be brought.

(4) A court before which a child is brought on the warrant has jurisdiction to hear and determine the complaint.

(5) If the court is the Supreme Court, a District Court or a Childrens Court Judge, the complaint must be heard and determined by a Judge sitting without a jury.

**Court's decision on complaint**

**184.(1)** If the court is satisfied of the matters specified in the complaint, it may take the action mentioned in subsection (2) or (3).

(2) The court may—

- (a) revoke the immediate release order; and
- (b) subject to section 187 (Detention reduced to the extent just), order the child to serve the sentence of detention for which the immediate release order was made.

(3) Instead of revoking the immediate release order, the court may permit the child a further opportunity to satisfy the conditions of the order and if it thinks fit vary the conditions.

(4) The onus is on the child to satisfy the court it should permit the child

this further opportunity.

**Options available to court before which a child subject to an immediate release order is found guilty of an indictable offence**

**185.(1)** In this section—

**“lower court”** means—

- (a) in relation to the Supreme Court—a District Court or the Childrens Court; or
- (b) in relation to a District Court or Childrens Court Judge—a Childrens Court Magistrate.

**“the court”** means the court mentioned in subsection (2).

(2) If a child who is subject to an immediate release order is found guilty of an indictable offence, the court before which the child is found guilty may exercise the powers mentioned in subsections (3) to (6) in relation to the immediate release order.

(3) If the court considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order, the court need take no further action.

(4) If—

- (a) the immediate release order was made by the court or a lower court; and
- (b) the court considers that the immediate release order should be revoked;

the court may—

- (c) revoke the immediate release order; and
- (d) subject to section 187 (Detention reduced to the extent just), order the child to serve the sentence of detention for which the immediate release order was made.

(5) If—

- (a) the immediate release order was not made by the court or a lower court; and

- (b) the court considers that the immediate release order should be revoked;

the court may order the child to appear before the court that made the order.

(6) On ordering a child to appear before another court under subsection (5), the court may commit the child to custody or release the child as provided by Part 3 to be brought or appear before the other court.

(7) A court before which a child appears under an order made under subsection (6) may—

- (a) if it considers that the child should be given a further opportunity to satisfy the conditions of the immediate release order—take no further action; or
- (b) if it considers that the immediate release order should be revoked—revoke the immediate release order.

(8) If a court revokes an immediate release order under this section, the court must—

- (a) order the child to serve the sentence of detention in relation to which the immediate release order was made; and
- (b) issue the warrant mentioned in section 167 (Detention to be served in detention centre).

### **Variation and revocation in the interests of justice**

**186.(1)** If an immediate release order is in force in relation to a child, on application by or on behalf of the child or the chief executive, the court that made the immediate release order may—

- (a) vary the requirements of the order; or
- (b) revoke the immediate release order;

if it appears to the court that it is in the interests of justice to do so, having regard to circumstances that have arisen or become known since the immediate release order was made.

(2) Notification of the making of an application under subsection (1) must be given by—

- (a) if the application is made by or on behalf of the child—the

applicant to the chief executive; or

- (b) if the application is made by the chief executive—the chief executive to the child.

(3) An application cannot be made on the grounds that the child has contravened a requirement of the immediate release order.

(4) If a court revokes an immediate release order under this section the court must order the child to serve the sentence of detention in relation to which the immediate release order was made.

### **Detention reduced to the extent just**

**187.** A court that revokes an immediate release order and orders a child to serve the period of detention for which the immediate release order was made must reduce the period of detention by any period the court considers just having regard to everything done by the child to conform with the immediate release order.

### ***Subdivision 3—Release after fixed period of detention***

#### **Release of child after service of period of detention**

**188.(1)** Unless a court makes an order under subsection (2), a child sentenced to serve a period of detention must be released from detention after serving 70% of the period of detention.

(2) A court may order a child to be released from detention after serving 50% or more, and less than 70%, of a period of detention if it considers that there are special circumstances, for example to ensure parity of sentence with that imposed on a person involved in the same or related offence.

#### **Chief executive’s fixed release order**

**189.(1)** At the end of the period after which a child is required to be released under section 188 (Release of child after service of period of detention), the chief executive must make an order (“**fixed release order**”) releasing the child from detention.

(2) The chief executive may—

- (a) impose conditions that the chief executive considers appropriate on the fixed release order; and
- (b) amend the conditions at any time by written notice served on the child.

### **Release period counts as part of detention period**

**190.** A period of time for which a child is released from detention under a fixed release order must be counted as part of the period that the child spent in detention for the purpose of calculating the end of the child's period of detention.

### **Cancellation of release order**

**191.(1)** If the chief executive is of the opinion, on reasonable grounds, that a child released from detention under a fixed release order has contravened a condition imposed by the chief executive on the order, the chief executive may revoke the order by instrument.

**(2)** If the chief executive revokes a release order the chief executive may make application to a Magistrate for a warrant to arrest the child and return the child to a detention centre for the unexpired portion of the child's sentence.

**(3)** If, on application under subsection (2), the Magistrate is satisfied on the chief executive's complaint on oath that the child named in the warrant has failed to comply with the conditions of the child's fixed release order, the Magistrate may issue a warrant authorising all police officers to arrest the child and return the child to a detention centre.

**(4)** A warrant issued under subsection (3) must specify the grounds on which the warrant was issued.

**(5)** The Commissioner on being requested by the chief executive to do so must withdraw a warrant issued under this section.

**(6)** The period spent by the child out of custody after the issue of a warrant is not to be counted as part of the time spent by the child in detention for the purpose of calculating the end of the period of detention from which the child was released, unless the chief executive determines otherwise at any time.

***Division 8—Restitution and compensation*****Restitution, compensation**

**192.(1)** In this section—

**“offence affected property”** includes—

- (a) property in relation to which the offence was committed; or
- (b) property affected in the course of, or in connection with, the commission of the offence, for example, property of a victim of an offence committed against the victim’s person.

**(2)** If a child is found guilty before a court of an offence relating to property or against the person of another, the court may in addition to making a sentence order against the child, make 1 or more of the following orders—

- (a) an order that the child make restitution of offence affected property;
- (b) an order that the child pay compensation (not more than an amount equal to 20 penalty units) for loss caused to offence affected property;
- (c) an order that the child pay compensation for injury suffered by another person (whether the victim against whose person the offence was committed or another) because of the commission of the offence.

**(3)** An order made under subsection (1) requiring a child to pay an amount by way of compensation or making restitution must direct—

- (a) that the amount must be paid by a time specified in the order or by instalments specified in the order; and
- (b) that the amount must be paid in the first instance to the proper officer of the court.

**(4)** An order under this section may include a direction the court considers necessary or convenient for the order, for example the way in which restitution of property is to be carried out.

**(5)** A court may make an order requiring a child to pay an amount under this section only if the court is satisfied that the child has the capacity to pay

the amount.

### ***Division 9—Application of Traffic Act 1949***

#### **Application of Traffic Act 1949 generally**

**193.(1)** Subject to this Act, the provisions of the *Traffic Act 1949* apply in relation to a child as they apply in relation to an adult.

**(2)** For this purpose—

- (a) a reference in the *Traffic Act 1949* to a Magistrates Court or justice is taken to include a reference to a Childrens Court Magistrate; and
- (b) a reference in the *Traffic Act 1949* to a clerk of a Magistrates Court is taken to be a reference to a clerk of a Childrens Court.

#### **Disqualification**

**194.(1)** In this section—

“**disqualified**” means disqualified from holding or obtaining a driver’s licence.

**(2)** If—

- (a) a child is found guilty of an offence under the Criminal Code, *Traffic Act 1949* or another Act; and
- (b) were the child convicted of the offence as an adult the child would be liable to be disqualified on the conviction whether under the Criminal Code, *Traffic Act 1949* or another Act;

the child is also liable to be disqualified to the same extent.

**(3)** If—

- (a) a child is found guilty of an offence under the Criminal Code, *Traffic Act 1949* or another Act; and
- (b) a conviction is recorded; and
- (c) were the child convicted of the offence as an adult, the child would be disqualified by the conviction by operation of law;



the child is also disqualified to the same extent.

(4) Subject to subsection (6), section 16C of the *Traffic Act 1949* applies in relation to a child found guilty of an offence mentioned in paragraph (a) or (b) of the section and, for this purpose, a mention in the section of a conviction includes a finding of guilt.

(5) Subject to subsection (6), sections 21 and 22 of the *Traffic Act 1949* apply in relation to a child acquitted of a charge of an offence.

(6) Subsections (4) and (5) apply only if the child is of an age when persons generally are eligible to obtain a driver's licence.

***Division 10—Application of Chapter 65A of the Criminal Code—  
compensation for injury***

**Civil compensation orders**

**195.** Chapter 65A of the Criminal Code applies in relation to an offence committed by a child and, for this purpose, a reference in the Chapter to a conviction of an offence includes a reference to a finding of guilt.

***Division 11—Orders against parent***

**Interpretation**

**196.** In this Division—

“**parent**” means a guardian of the child, other than the chief executive;

“**show cause hearing**” means the hearing and determination of the issue of whether a parent should be ordered to pay compensation under section 198(5) (Show cause hearing).

**Notice to parent of child offender**

**197.(1)** If it appears to a court that finds a child guilty of an offence relating to property or against the person of another, on evidence admitted or submissions made in the case against the child—

(a) that wilful failure on the part of a parent of the child to exercise

proper care of, or supervision over, the child was likely to have substantially contributed to the commission of the offence; and

- (b) that compensation should be paid to any person for—
  - (i) loss caused to the person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or
  - (ii) injury suffered by the person, whether as the victim of the offence or otherwise, because of the commission of the offence;

the court, of its own initiative or on application by the prosecution, may decide to call on the parent to show cause, as directed by the court, why the parent should not pay the compensation.

(2) If the parent is present in court when the court decides to call on the parent to show cause, the court may call on the parent to show cause by announcing its decision in court.

(3) If a court calls on a parent under subsection (2), the court must—

- (a) reduce its grounds to writing; and
- (b) give a copy to the parent.

(4) The court in all cases, instead of acting under subsection (2), may cause the proper officer of the court to give written notice to the parent calling on the parent to show cause as directed by the notice why the parent should not pay the compensation.

(5) If a parent is called on under subsection (4)—

- (a) the court must reduce its grounds to writing; and
- (b) a copy of the grounds must be given, in accordance with the courts directions (if any), to the parent a reasonable time before the show cause hearing.

### **Show cause hearing**

**198.(1)** At the show cause hearing—

- (a) evidence and submissions in the case against the child are to be treated as evidence and submissions in the show cause hearing;

and

- (b) further evidence may be given and submissions made; and
- (c) the parent may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
- (d) the parent may require any fact stated in submissions mentioned in paragraph (a) to be proved.

**(2)** Subject to subsection (1)—

- (a) the determination of the issues on the show cause hearing must be by way of a fresh hearing on the merits; and
- (b) the court is not bound by a determination made by it under section 197 (Notice to parent of child offender).

**(3)** If the parent was called on to show cause on the prosecution's application, the prosecution is a party to the show cause hearing.

**(4)** If the parent was called on to show cause by the court's own initiative the prosecution, which in this case always includes the Director of Prosecutions, may at the show cause hearing—

- (a) appear and give the court the assistance it may require; or
- (b) intervene as a party with the court's permission.

**(5)** If on consideration of evidence and submissions mentioned in subsection (1)(a) and (b), a court is satisfied beyond reasonable doubt of the matters mentioned in section 197(1)(a) and (b) (Notice to parent of child offender), the court may make an order requiring the parent to pay compensation.

**(6)** The order must direct that—

- (a) the amount must be paid by a time specified in the order or by instalments specified in the order; and
- (b) the amount must be paid in the first instance to the proper officer of the court.

**(7)** In determining the amount to be paid by a parent by way of compensation, the court must have regard to the parent's capacity to pay the amount, which must include an assessment of the effect any order would have on the parent's capacity to provide for dependants.

(8) A court may proceed under this section in the absence of the parent if the court is satisfied that the parent has been given notice of the show cause hearing under section 197 (Notice to parent of child offender).

(9) A show cause hearing may be heard before the court as constituted when calling on the parent to show cause, or as otherwise constituted.

### **Recovery of unpaid compensations amount**

**199.(1)** An order of a court under section 198 (Show cause hearing) for payment of compensation by a parent is enforceable as if it were an order for payment of money made by justices under the *Justices Act 1886*.

(2) The amount of compensation ordered to be paid (including an amount of costs) constitutes a debt owing by the parent to the person in whose favour the order is made.

(3) The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*.

(4) If the order is filed in the registry of a Magistrates Court, the order is taken to be an order made by the court and, in addition to the way of enforcement mentioned in subsection (1), may be enforced as an order of the court.

## **PART 6—CORRECTIONAL SERVICES FOR CHILDREN**

### ***Division 1—Administration***

#### **Application of Corrective Services Act 1988**

**200.** The *Corrective Services Act 1988* (other than sections 38, 40, and 113 to 121) does not apply to a child, unless this Act expressly applies that Act to a child in particular circumstances.

**Establishment of detention centres and other places**

**201.** The Governor in Council may, by regulation—

- (a) establish detention centres and other places for the purposes of this Act; and
- (b) determine the purpose for which a place (other than a detention centre) may be used; and
- (c) name a detention centre or other place.

**Chief executive to establish programs and services**

**202.(1)** The chief executive must establish—

- (a) programs and services that are necessary to give effect to any order made or direction given under this Act; and
- (b) programs and services for the support, assistance, and reintegration into the community of children who have committed offences.

**(2)** Without limiting subsection (1), the chief executive must determine the activities that are to comprise community service in relation to every community service order.

**(3)** The chief executive may establish other programs and services for the benefit of children who have committed offences that the chief executive determines.

**Management of detention centres**

**203.(1)** Subject to this Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

**(2)** The chief executive may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example directions, codes, standards and guidelines relating to—

- (a) detention centre organisation; or
- (b) functions, conduct and responsibilities of detention centre officers; or

- (c) types of programs for children detained in a detention centre; or
- (d) contact between children detained in the detention centre and members of the public; or
- (e) arrangements for educational, recreational and social activities of children detained in detention centres.

**(3)** In relation to each detention centre, the chief executive is responsible for—

- (a) providing services that promote the health and wellbeing of children detained at the centre; and
- (b) promoting the social, cultural and educational development of children detained at the centre; and
- (c) maintaining discipline and good order in the centre; and
- (d) maintaining the security and management of the centre.

### **Official visitors appointment**

**204.(1)** The Minister must appoint 1 or more official visitors for each detention centre.

**(2)** At least 1 official visitor for a detention centre must be a legal practitioner.

**(3)** An official visitor—

- (a) holds office—
  - (i) only in relation to the detention centre named in the appointment; and
  - (ii) for the period (not more than 2 years) specified in the appointment; and
- (b) is eligible for reappointment; and
- (c) is entitled to the remuneration and allowances determined by the Minister.

**(4)** A person who is—

- (a) an officer of the public service; or
- (b) a member of the Queensland Police Service; or

(c) an officer of the Queensland Corrective Services Commission; is not eligible for appointment as an official visitor.

### **Functions, powers and duties of official visitor**

**205.(1)** An official visitor has the functions and powers conferred or imposed on official visitors under this Act or any other Act.

(2) The official visitor for a detention centre must visit the detention centre at least once in each month.

(3) The official visitor must prepare and submit a report to the chief executive for each visit.

(4) An official visitor may—

- (a) enter the detention centre for which the official visitor is appointed at any time; and
- (b) at any place perform functions that the chief executive directs the official visitor to perform.

### **Directions to official visitor on security**

**206.** The chief executive may give the official visitor for a detention centre directions relating to the security of the detention centre that the chief executive considers necessary.

## ***Division 2—Children in detention centres***

### **Where children to be detained**

**207.(1)** The chief executive must determine the detention centre at which a child ordered to be detained or remanded in custody is to be detained.

(2) The chief executive may direct that a child detained in a detention centre be transferred to another detention centre.

**Authority for admission to detention centre**

**208.(1)** The chief executive must not—

- (a) admit a child to a detention centre; or
- (b) detain a child in a detention centre;

unless the chief executive is given the prescribed form and a document mentioned in subsection (2).

**(2)** The documents are—

- (a) a warrant authorising the detention of the child; or
- (b) if the child has been refused bail by a police officer in relation to a charge of an offence—a copy of the bench charge sheet for the offence; or
- (c) a list or calendar made out under Order 8 rule 3 of the *Criminal Practice Rules 1990* that contains the name of the child and particulars of the judgment pronounced on the child; or
- (d) a document in the prescribed form that contains the relevant details of an existing document mentioned in paragraph (c).

**Child must be given an explanation on entry to detention centre**

**209.** As soon as practicable after being admitted to a detention centre, a child must be given an explanation of the child's rights and responsibilities as a resident of the detention centre.

**Leave of absence**

**210.(1)** Subject to this Act, the chief executive may, by written notice given to a child detained in a detention centre, and subject to conditions that the chief executive determines, grant the child leave of absence.

**(2)** The leave may only be granted—

- (a) for a specified period; and
- (b) for a specified purpose set out in subsection (3); and
- (c) subject to specified conditions.

**(3)** The purposes for which leave may be granted are—



- (a) to seek or engage in paid or unpaid employment; and
- (b) to attend any place for educational or training purposes; and
- (c) to visit the child's family, relatives or friends; and
- (d) to take part in sport, recreation or entertainment in the community; and
- (e) to attend any place for medical examination or treatment; and
- (f) to attend a funeral; and
- (g) any other purpose that the chief executive considers will assist in the child's reintegration into the community.

**(4)** If a child is granted leave of absence—

- (a) the child is taken to be in lawful custody during the period of leave; and
- (b) the period of leave counts as part of the child's period of detention.

**(5)** If the child contravenes a condition imposed in relation to a grant of leave of absence (other than a condition with respect to returning to a detention centre) the chief executive may, in writing—

- (a) vary the conditions of the grant; or
- (b) cancel the leave of absence.

### **Childrens Court may order transfer to prison**

**211.(1)** Subject to subsection (2), a person serving a period of detention in a detention centre or the chief executive may apply to a Childrens Court Judge for an order that the unserved portion of the period of detention be served as a term of imprisonment.

**(2)** Subsection (1) only applies if—

- (a) the person is 18 or more; or
- (b) the person is 17 or more and has been sentenced to serve a term of imprisonment.

**(3)** The Court may grant or refuse to grant the order.

**(4)** An order made under subsection (1)—

- (a) must specify the day on which the order will take effect; and
- (b) is taken for all purposes to be a sentence of imprisonment for a period equal to the length of the unserved portion of the person detention.

(5) The chief executive must promptly notify the Director-General of Corrective Services of the order.

(6) The *Corrective Services Act 1988* applies to a person imprisoned under the order.

### **Chief executive may authorise treatment**

**212.** Despite any other Act or law, the chief executive is authorised to give consent to any medical treatment of a child in the chief executive's custody if—

- (a) the medical treatment requires the consent of a guardian of the child; and
- (b) the chief executive is unable to ascertain the whereabouts of a guardian of the child despite reasonable inquiries; and
- (c) it would be detrimental to the child's health to delay the medical treatment until the guardian's consent can be obtained.

### **Ordinary visitor**

**213.(1)** This section does not apply to an official visitor.

(2) The chief executive may approve the entry of visitors to a detention centre either generally or in a particular case.

(3) The chief executive may refuse entry to a detention centre to a person if—

- (a) in the chief executive's opinion, the person's presence in the detention centre would prejudice the security or good order of the detention centre; or
- (b) the person does not, on request, give the person's name, address or proof of identity; or
- (c) the person refuses to comply with a request made under

subsection (5).

(4) Subject to section 214, the chief executive may require a visit to a detention centre to take place in the presence, or under the supervision, of a member of the staff of the detention centre.

(5) The chief executive may, on reasonable grounds, ask a visitor to a detention centre to submit any thing in the person's possession to search by a member of the staff of the detention centre.

(6) If a visitor who has entered a detention centre refuses to submit to the search mentioned in subsection (5), the chief executive may direct the visitor to immediately leave the centre.

(7) A visitor to a detention centre must comply with a direction under subsection (6) or a direction with respect to the security or good order of the centre given by a member of the staff of the detention centre who is authorised to give the direction.

(8) A police officer or a member of the staff of a detention centre may, using force that is reasonable and necessary, remove from the centre a visitor who refuses to leave the centre immediately when requested to leave.

### **Protection of legal practitioner representing child**

**214.(1)** A legal practitioner representing a child held in a detention centre is entitled to access to the child at all reasonable times.

(2) A member of the staff at a detention centre—

- (a) must allow the legal practitioner to conduct an interview with the child out of the hearing of any other person; and
- (b) must not open, copy, remove or read any correspondence—
  - (i) from the child to the legal practitioner; or
  - (ii) from the legal practitioner to the child.

### ***Division 3—Complaints***

**Complaints generally**

**215.(1)** A child or parent of a child detained in a detention centre may complain about a matter that affects the child.

(2) The chief executive must issue written instructions on how a complaint may be made and dealt with, which may include the direction of the complaint to an official visitor or other appropriate authority.

(3) Despite subsection (2), a child is entitled—

- (a) to complain directly to an official visitor; or
- (b) subject to subsection (4), have the child's complaint referred to an official visitor.

(4) The chief executive need not deal with a complaint that the chief executive reasonably believes to be trivial or made only to cause annoyance.

(5) The chief executive must tell the child how the complaint will be dealt with.

(6) This section does not limit the powers of an official visitor.

**Official visitor to hear and investigate complaints**

**216.(1)** Subject to subsection (2), the official visitor must hear and investigate a complaint made or referred to the official visitor under section 215 (Complaints generally).

(2) The official visitor must not investigate a complaint—

- (a) that the official visitor believes to be trivial or made only to cause annoyance; or
- (b) if the complaint does not relate to any function of the chief executive under this Act.

(3) The official visitor must give the chief executive a report of an investigation conducted under this section.

**Powers of official visitors**

**217.** An official visitor—

- (a) may at any time ask—

- (i) a child detained in the centre; or
- (ii) a member of the staff of a detention centre;  
to provide any information and answer any question relevant to the investigation of a complaint; and
- (b) may examine and take a copy of any document kept under or for the purposes of the Act; and
- (c) must be allowed to conduct an interview with a child detained in the centre out of the hearing of any person employed at the centre; and
- (d) has powers that may be prescribed by regulation.

**Child's communication with official visitor to be private**

**218.** A member of the staff of a detention centre—

- (a) must allow the official visitor for the centre to conduct an interview with a child detained at the centre out of the hearing of any other person; and
- (b) must not open, read, copy or remove any correspondence—
  - (i) from a child detained in the centre to the centre's official visitor; or
  - (ii) from the detention centre's official visitor to a child detained in the centre.

***Division 4—Offences*****Escape**

**219.(1)** A person who is lawfully detained under this Act must not—

- (a) escape from detention; or
- (b) attempt to escape from detention; or
- (c) be absent from a detention centre without lawful authority; or
- (d) escape or attempt to escape from the custody of a police officer or

an officer of the department into which the person was placed under this Act.

Maximum penalty (subject to Part 5)—40 penalty units, imprisonment for 1 year or both.

(2) A police officer may arrest, without warrant, a person who commits an offence against subsection (1).

### **Search warrant**

**220.(1)** The chief executive or a police officer may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that a person who has escaped from detention is, or may be within the next 7 days, in any place.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the police officer or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise any police officer, with specified assistance and by specified force that is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) search for, and if found, arrest the person named in the warrant; and
- (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

**Warrants may be granted by telephone, facsimile, radio etc.**

**221.(1)** If the chief executive or a police officer (“**applicant**”) considers it necessary to do so because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the applicant’s remote location;

the applicant may apply by telephone, facsimile, radio or another form of communication for a warrant under section 220 (Search warrant).

**(2)** Before applying for the warrant, the applicant must prepare an information on oath of the kind mentioned in section 220(2) (Search warrant) that sets out the grounds on which the issue of the warrant is sought.

**(3)** If it is necessary to do so, the applicant may apply for the warrant before the information has been sworn.

**(4)** If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) that the Magistrate may have required concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 220 (Search warrant), complete and sign the warrant that the Magistrate would issue under the section if the application had been made under the section.

**(5)** If the Magistrate completes and signs the warrant, the Magistrate must promptly send a copy of the warrant to the applicant by facsimile or, if it is not reasonably practicable to do so—

- (a) the Magistrate must—
  - (i) tell the applicant what the terms of the warrant are; and
  - (ii) tell the applicant the day and time when the warrant was signed; and
  - (iii) record on the warrant the reasons for granting the warrant; and

(b) the applicant must—

- (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
- (ii) write on the form of warrant the name of the Magistrate and the day and time when the Magistrate signed the warrant.

(6) The applicant must also—

- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
- (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;

send to the Magistrate—

- (c) the information mentioned in subsection (2), which must have been properly sworn; and
- (d) if a form of warrant was completed by the police officer under subsection (5)(b)—the completed form of warrant.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 220 (Search warrant).

(8) A facsimile copy of a warrant, or a form of warrant properly completed by the police officer under subsection (5)(b), is authority for an entry, search, arrest or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

- (a) it is material for a court to be satisfied that an entry, search, arrest or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume that the exercise of power was not authorised by this



section unless the contrary is proved.

### **Offences relating to detention centres**

**222.(1)** A person must not—

- (a) without lawful authority enter or attempt to enter a detention centre; or
- (b) remain in or in the vicinity of a detention centre after having been directed to leave by—
  - (i) the chief executive; or
  - (ii) a police officer; or
- (c) in contravention of a direction from the chief executive, communicate or attempt to communicate with a person detained at the detention centre; or
- (d) without lawful authority—
  - (i) convey or deliver, or allow another person to convey or deliver, to a person detained in the centre any liquor, drugs, money, letter, document or other article; or
  - (ii) convey, or allow another person to convey, from the detention centre any liquor, drugs, money, letter, document, clothing or other article; or
  - (iii) leave, or allow to be left, at the centre any liquor, drugs, money, letter, document, clothing or other article with the intention that it come into the possession of a person detained in the centre.

Maximum penalty (subject to Part 5)—40 penalty units, imprisonment for 1 year or both.

(2) A police officer may arrest without warrant any person found committing an offence against subsection (1).

### ***Division 5—Child of detainee***

**Child of detainee may be accommodated in detention centre**

**223.** The chief executive may allow a child of a person detained in a detention centre to be accommodated in the detention centre subject to conditions the chief executive considers appropriate.

**Registration of birth of child of detainee**

**224.(1)** In this section—

“**document**” means a certificate or other document made or issued under the *Registration of Births, Deaths and Marriages Act 1962* in relation to the birth of a child or an alteration or addition to the name of a child.

**(2)** If a document is made or issued in relation to a child whose mother or father is, or was when the child was born, detained in a detention centre or otherwise detained under this Act—

- (a) the document must not state that fact or contain information from which that fact can reasonably be inferred; and
- (b) an address—
  - (i) that is required by the *Registration of Births, Deaths, and Marriages Act 1962* to be shown in the document; and
  - (ii) that cannot be shown in the document because of paragraph (a);

must instead be shown as the city or town in which or nearest to which the address is situated.

**PART 7—GENERAL****Parent entitled to know of whereabouts of child in custody**

**225.(1)** A parent of a child who is being held in custody on being arrested for an offence, or on an order made under this Act, may request the chief executive to inform the parent of the whereabouts of the child.

**(2)** If—

- (a) the child is in the custody of the chief executive; or
- (b) the chief executive knows of the whereabouts of the child;

the chief executive must give the parent the information.

### **Preservation of confidentiality**

**226.(1)** A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so—

- (a) for the purpose of this Act; or
- (b) when expressly authorised under another Act; or
- (c) when authorised under the regulations.

Maximum penalty (subject to Part 5)—40 penalty units.

**(2)** A person is not required—

- (a) to disclose confidential information to a court or tribunal; or
- (b) to produce a record containing confidential information to a court or tribunal;

unless—

- (c) it is necessary to do so for the purpose of this Act; or
- (d) the court considers that it is necessary in the interests of justice to do so.

**(3)** A person gains information through involvement in the administration of this Act if the person gains the information—

- (a) in the course of the involvement; or
- (b) because of opportunity provided by the involvement.

**(4)** The following persons are taken to be involved in the administration of this Act—

- (a) an officer of the department; and
- (b) a person investigating a matter under this Act; and
- (c) any other person who performs a function under or for the purposes of this Act.

(5) In this section—

“**child**” means a child dealt with under this Act;

“**confidential information**” includes—

- (a) the name, address, school, place of employment or any other particular likely to lead to the identification of a child; and
- (b) any photograph, picture, videotape or other visual representation of a person that is likely to lead to the identification of the child; and
- (c) a report made for the purposes of a proceeding in relation to a child; and
- (d) a report about a child made for the department or another Government department; and
- (e) a report about a child given to an agency for the purpose of carrying out the objects of this Act.

### **Delegation by chief executive**

**227.(1)** Without limiting section 10 of the *Family Services Act 1987*, the chief executive may delegate to an officer of the department powers conferred on the chief executive by this Act.

(2) Subsection (1) applies subject to any written direction of the Minister.

### **Evidence**

**228.(1)** This section applies to any proceeding.

(2) It is not necessary to prove the appointment of the chief executive, an officer of the department, an official visitor or another person appointed under this Act.

(3) It is not necessary to prove the authority of any person to take any action under this Act.

(4) Subsection (2) or (3) does not apply if a party to the proceeding, by reasonable notice, requires the appointment or authority to be proved.

(5) This section does not affect a person’s right to adduce evidence to disprove the appointment or authority.

**Proceeding for offence**

**229.(1)** A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

**(2)** In a proceeding for an offence against this Act—

- (a) a police officer; or
- (b) the chief executive;

may appear on behalf of the prosecution although not a complainant or arresting officer.

**Extension of time for payment of amounts**

**230.** The proper officer of a court by which a person is ordered to pay an amount under this Act by way of fine, restitution or compensation on application in writing made by any party to the proceeding in which the order was made may extend the period in which the person is required to pay the amount subject to conditions if any that the proper officer considers just.

**Enforcement of child payments**

**231.** If an order is made by a court under this Act requiring a child to pay to the State or to any person an amount of money by way of fine, restitution or compensation—

- (a) the amount ordered to be paid constitutes a debt owing to the State or other person by the child; and
- (b) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and
- (c) on being so filed, the order is taken to be an order properly made by the Magistrates Court under that Act and may be enforced as an order so made.

**Enforcement of sentence by calendar**

**232.** Despite a provision of this Act requiring a court to issue or order the issue of a warrant to have a child taken into custody and delivered to a

detention centre to serve a period of detention, the court need not act under the provision if a calendar or other document of the registrar or other official of the court has the same effect.

### **Regulations**

**233.(1)** The Governor in Council may make regulations for the purpose of this Act.

**(2)** Without limiting the power conferred by subsection (1), the Governor in Council may make regulations in relation to the matters set out in Schedule 1.

### **Transitional provisions**

**234.** Schedule 2 has effect.

**SCHEDULE 1****REGULATION MAKING POWER**

section 233(2)

1. The form of an attendance notice, all matters relating to the operation of attendance notices in the place of complaints and summons.
2. Matters to be included in presentence reports.
3. Forms, conditions, requirements, duties, functions and powers relating to orders made under Part 5.
4. The standards, management, control and supervision of probation orders, community service orders and immediate release orders.
5. Standards, management, control and supervision of detention centres.
6. Maintenance of good order and discipline within detention centres.
7. Conditions for the release of children from detention centres.
8. Medical services to children in detention.
9. Searches of children in detention centres and their possessions.
10. The appointment, functions and powers of official visitors.
11. Matters relating to the breach, revocation or variation of orders made under this Act.
12. Penalties for a contravention of a regulation of not more than 20 penalty units.

## SCHEDULE 2

### TRANSITIONAL PROVISIONS

section 234

#### Definitions

1. In this Schedule—

“**commencing day**” means the day fixed under section 2 (Commencement);

“**former Court**” means a Children’s Court constituted under the *Children’s Services Act 1965* before the commencing day;

“**new Court**” means the Childrens Court constituted under the *Childrens Court Act 1992*;

“**repealed provision**” means a provision of the *Children’s Services Act 1965* that is repealed by this Act.

#### Continuation of offence orders

2.(1) Subject to clause 3, despite the repeal of the repealed provisions, those provisions continue to apply in relation to an order made under the provisions against a child for an offence as if this Act had not been passed.

(2) For the purpose of subclause (1), mention of the former Court in the provisions is taken to mean the new Court constituted by a Childrens Court Magistrate or Stipendiary Magistrate.

#### Resentencing

3.(1) This clause applies to a person who, immediately before the commencing day, because of being convicted of an offence, is detained under an order (“**the original order**”) made under section 63 of the *Children’s Services Act 1965* as in force immediately before that day.

(2) The person or the chief executive acting in the person’s interest may



## SCHEDULE 2 (continued)

apply to the sentencing court for the person to be resentenced for the offence under this Act.

(3) On application under subclause (2), the sentencing court must resentence the person under this Act for the offence and in so doing must act on—

- (a) all relevant material admitted before the court during the previous trial, conviction and sentence of the person; and
- (b) other material relevant to the sentencing that may be led before the court by the person or the prosecution.

(4) Without limiting the circumstances to which the court may have regard in sentencing the person, in deciding how to deal with the person the sentencing court must have regard to the period for which the person was—

- (a) held in custody on the offence before the original order was made; and
- (b) detained in custody under the original order.

(5) If the court decides that the person should not be further penalised for the offence, it may—

- (a) discharge the original order; and
- (b) order the person to be released.

(6) If the court decides that the person should be further penalised but further detention is not warranted, it may—

- (a) discharge the original order; and
- (b) make a probation order against the person under section 121 (Sentence orders—serious offences).

(7) An arrangement may, at any time, be made between the chief executive and the Corrective Services Commission for the Corrective Services Commission to supervise a probation order mentioned in subclause (6) if the person has attained or attains 18 years.

(8) If an arrangement mentioned in subclause (7) is made, the probation order is then taken to have been made under the *Corrective Services Act 1988*.

## SCHEDULE 2 (continued)

(9) If the court decides that the person should be further detained, it may—

- (a) discharge the original order; and
- (b) make a detention order under section 121 (Sentence orders—serious offences).

(10) A detention order under subclause (9)—

- (a) must be calculated so that it may take effect from the start of the detention under the original order; and
- (b) must be ordered to take effect from that time.

(11) If the person, at the time of resentencing under subclause (9)(b), is being detained in a prison, the detention order is taken to be an order that the person serve a term of imprisonment for the same period.

(12) The *Corrective Services Act 1988* applies to a person mentioned in subclause (11).

(13) No cause of action or suit exists against the State in relation to any period for which a person resented under this clause may have been detained in excess of the period for which the person would have been detained if originally sentenced to the new sentence.

(14) A person resented under this clause and the Attorney-General, on the date of determination of the new sentence, have the same rights of appeal under the Criminal Code in relation to the new sentence as apply when a person convicted on indictment is sentenced apart from this clause.

(15) In this clause—

**“sentencing Court”**, in relation to an order made under section 63 of the *Children’s Services Act 1965* as in force immediately before the commencing day, means the court that made the order or a court of the same jurisdiction as the court that made the order.

**Transitional regulations**

4. The regulations may make provision with respect to any matter for which—

## SCHEDULE 2 (continued)

- (a) it is necessary or convenient to facilitate the transition from the operation of a repealed provision; and
- (b) this Schedule does not make any or sufficient provision.

**ENDNOTES****1 Index to Endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation on or before 26 August 1993. Future amendments of the *Juvenile Justice Act 1992* may be made in accordance with this reprint under section 49 of the *Reprints Act 1992*.

**3 List of legislation****Juvenile Justice Act 1992 No. 44**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 313)

as amended by—

**Penalties and Sentences Act 1992 No. 48 s 207 Sch**

date of assent 24 November 1992

commenced 27 November 1992 (SL No. 377)

**Statute Law (Miscellaneous Provisions) Act 1993 No. 32 s 3 Sch 1**

date of assent 3 June 1993

commenced on date of assent

## 4 List of annotations

### Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
prov	=	provision
Pt	=	Part
RA	=	<i>Reprints Act 1992</i>
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

### Definitions

s 5 def “penalty unit” amd 1992 No. 48 s 207 Sch

### Attendance notice equivalent to a complaint and summons

s 29 amd 1993 No. 32 s 3 Sch 1

### Child must be given release notice

s 40 amd 1993 No. 32 s 3 Sch 1

### Childrens Court Judge may grant bail

s 46 amd 1993 No. 32 s 3 Sch 1

### Correction of error by court making order

s 98 amd 1992 No. 48 s 207 Sch

### Outstanding charge may be taken into account on sentence

s 117 amd 1992 No. 48 s 207 Sch

### Escape

s 219 amd 1993 No. 32 s 3 Sch 1

### Acts amended

s 235 om (see s 40 RA)

### Repeal of Children’s Services Act and Another Act Amendment Act 1989

s 236 om (see s 40 RA)

### Acts Amended

Sch 3 om (see s 40 RA)

**5 Table of corrected minor errors**TABLE OF CORRECTED MINOR ERRORS  
under section 44 of the *Reprints Act 1992*

Section	Description
20(2)	om 'section' ins 'sections'
162	om ' <i>Workers</i> ' ins ' <i>Workers</i> '
181 prov hdg	om ' <b>Workers</b> ' ins ' <b>Workers</b> '

**6 Table of renumbered provisions**TABLE OF RENUMBERED PROVISIONS  
under section 43 of the *Reprints Act 1992*

Original	Renumbered as
s 98(3)	98(4)